

## A BILL

To provide for a more competitive electric power industry, and for other purposes.

1        Be it enacted by the Senate and House of Representatives of the United States of America in  
2        Congress assembled,

### 3        SECTION 1. SHORT TITLE.

4        This Act may be cited as the "Comprehensive Electricity Competition Act".

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## TITLE I. RETAIL ELECTRIC SERVICE

### SEC.101. RETAIL COMPETITION.

(a) Retail Competition. The Public Utility Regulatory Policies Act of 1978 (referred to in this Act as PURPA) is amended by adding after section 608 the following new section:

#### “SEC. 609. RETAIL COMPETITION.

"(a) Definitions.--For purposes of this section, 'retail stranded costs' means the amount of net costs incurred or obligations undertaken before the date of enactment of the Comprehensive Electricity Competition Act by a distribution utility that--

"(1) were incurred or undertaken by that distribution utility in order to comply with a legal obligation on that utility to provide electricity to electric consumers in its service territory, and

"(2) cannot be recovered because of implementation of retail competition under subsection (b).

"(b) Retail Competition Requirement.--Except as provided in subsection (c), not later than January 1, 2003, any distribution utility that has the capability to deliver electric energy to an electric consumer over its facilities shall offer open access to those facilities for the sale of an

1 electric energy to the consumer and shall do so at rates, terms, and conditions that are not unduly  
2 discriminatory or preferential, as determined by the appropriate regulatory authority.

3 “(c) Opt Out.--(1) A State regulatory authority (with respect to a distribution utility for  
4 which it has ratemaking authority) may direct a distribution utility not to implement the retail  
5 competition requirement described in subsection (b) if the State regulatory authority finds, after  
6 notice and opportunity for hearing, that implementation of the retail competition requirement by  
7 the distribution utility will have a negative impact on a class of customers of that utility that  
8 cannot be mitigated.

9 “(2) A nonregulated distribution utility may determine not to implement the retail  
10 competition requirement described in subsection (b) if it finds, after notice and opportunity for  
11 hearing, that implementation of the retail competition requirement by the distribution utility will  
12 have a negative impact on a class of customers of that utility that cannot be mitigated.

13 “(3) The State regulatory authority (with respect to a distribution utility for which it has  
14 ratemaking authority) or nonregulated distribution utility shall publish the determination and its  
15 basis and shall file a notice with the Commission of its determination by January 1, 2002.

16 “(d) Notice of Retail Competition.--A State regulatory authority (with respect to a  
17 distribution utility for which it has ratemaking authority) or nonregulated distribution utility shall  
18 file with the Commission a notice that the distribution utility has implemented or will implement  
19 retail competition consistent with subsection (b). The notice shall describe the implementation  
20 of retail competition. The notice is effective for purposes of section 118, 119, 119A, and 119B  
21 of this Act and sections 212(h), 216, and 217 of the Federal Power Act on the date the notice is

1 filed or the date of implementation of retail competition consistent with subsection (b),  
2 whichever is later.

3 "(e) Consideration of Recovery of Retail Stranded Costs.—(1) If a State regulatory  
4 authority or nonregulated distribution utility conducts a public proceeding before a distribution  
5 utility implements retail competition as required under subsection (b), as part of this proceeding,  
6 the State regulatory authority or nonregulated distribution utility shall consider the appropriate  
7 mechanism to address recovery by a distribution utility for which it has ratemaking authority of  
8 retail stranded costs that are legitimate, prudent, and verifiable, if the utility has taken all  
9 reasonable steps to mitigate the costs, including assistance for workers who are employed or  
10 were most recently employed by an electric utility and who may become or have become  
11 unemployed as a result of the implementation of retail competition. A charge imposed for  
12 purposes of recovering retail stranded costs or providing assistance for unemployed workers  
13 should be imposed in a manner so as to minimize to the fullest extent possible any effect on an  
14 electric consumer's choice among competing suppliers or products.

15 “(2) If a State regulatory authority or nonregulated utility imposes or allows a charge to  
16 recover retail stranded costs under paragraph (1), it shall consider reducing the charge on an  
17 electric consumer who uses electric energy produced on-site when the charge results from the use  
18 of new on-site generation produced by—

19 “(A) a fuel cell,

20 “(B) a facility with an efficiency rate of at least 50 percent,

21 “(C) a facility that uses a single fuel source to produce at the point of use either

1 electric or mechanical power and thermal energy and that has a combined efficiency rate  
2 of at least 50 percent, or

3 “(D) a renewable resource.

4 "(f) Enforcement.--Any person may bring an action in the appropriate State court against  
5 a State regulatory authority, a distribution utility, or a nonregulated distribution utility for failure  
6 to comply with this section. Filing an action challenging whether retail competition is being  
7 implemented consistent with subsection (b) makes a notice of retail competition ineffective for  
8 purposes of section 118, 119, 119A, and 199B of this Act and sections 212(h), 216, and 217 of  
9 the Federal Power Act until final resolution of the action. Notwithstanding any other law, a court  
10 created under Article III of the Constitution does not have jurisdiction over an action arising  
11 under this section."

12 (b) Definitions.--Section 3 of PURPA is amended by adding after paragraph (21) the  
13 following new paragraphs:

14 "(22) The term 'notice of retail competition' means a notice filed under section  
15 609(d).

16 "(23) The term 'distribution utility' means a person, State agency, or any other  
17 non-federal entity that owns or operates a local distribution facility used for the sale of  
18 electric energy to an electric consumer.

19 "(24) The term 'nonregulated distribution utility' means a distribution utility not  
20 subject to the ratemaking authority of a State regulatory authority."

21 SEC. 102. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

PURPA is amended by adding the following new section after section 117:

"SEC. 118. AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

"(a) State Regulatory Authority.--If a State regulatory authority files a notice of retail competition with respect to a distribution utility, beginning on the effective date of the notice, the State regulatory authority may prohibit any other distribution utility located in the United States over which it does not have ratemaking authority (and any affiliate of such a utility, as defined under the Public Utility Holding Company Act of 1999) from selling electric energy to electric consumers of a distribution facility covered by the notice of retail competition, unless a notice of retail competition has been filed with respect to the other distribution utility.

"(b) Nonregulated Distribution Utility.--If a nonregulated distribution utility files a notice of retail competition, beginning on the effective date of the notice, it may prohibit any other distribution utility located in the United States (and any affiliate of such a utility, as defined under the Public Utility Holding Company Act of 1999) from selling electric energy to electric consumers of the nonregulated distribution utility covered by the notice unless a notice of retail competition has been filed with respect to the other distribution utility."

SEC. 103. AGGREGATION FOR PURCHASE OF RETAIL ELECTRIC ENERGY.

PURPA is amended by adding the following new section after section 118 as added by section 102 of this Act:

"SEC. 119. AGGREGATION FOR PURCHASE OF RETAIL ELECTRIC ENERGY.

"Notwithstanding any other provision of Federal or State law, and subject to legitimate and nondiscriminatory State requirements imposed on retail electric suppliers, a group of

1 customers or any entity acting on behalf of such group may acquire retail electric energy on an  
2 aggregate basis if the group of customers is served by one or more distribution utilities for which  
3 a State regulatory authority or nonregulated distribution utility has filed a notice of retail  
4 competition under section 609 of this Act for each distribution utility.”.

## 5 TITLE II. CONSUMER PROTECTION

### 6 SEC. 201. CONSUMER INFORMATION.

7 PURPA is amended by adding the following new section after section 119 as added by  
8 section 103 of this Act:

#### 9 "SEC. 119A. CONSUMER INFORMATION DISCLOSURE.

10 "(a) Disclosure Rules.--Not later than six months after the date of enactment of this Act,  
11 the Secretary, in consultation with the Commission, the Administrator of the Environmental  
12 Protection Agency, and the Federal Trade Commission, shall issue rules prescribing the form,  
13 content, placement, and timing of the supplier disclosure required under subsections (b) and (c) of  
14 this section. The rules shall be prescribed in accordance with section 553 of title 5, United  
15 States Code.

16 "(b) Disclosure to Electric Consumers.--An electric utility that offers to sell electric  
17 energy to an electric consumer shall provide the electric consumer, to the extent practicable and  
18 in accordance with rules issued under subsection (a), a statement containing the following  
19 information:

20 "(1) the nature of the service being offered, including information about  
21 interruptibility or curtailment of service;



1           "(2) the price of the electric energy, including a description of any variable  
2 charges;

3           "(3) a description of all other charges associated with the service being offered  
4 including, but not limited to, access charges, exit charges, back-up service charges,  
5 stranded cost recovery charges, and customer service charges;

6           "(4) information concerning the type of energy resource used to generate the  
7 electric energy and the environmental attributes of the generation (including air emissions  
8 characteristics); and

9           "(5) any other information the Secretary determines can be provided feasibly and  
10 would be useful to consumers in making purchasing decisions.

11          "(c) Disclosure to Wholesale Customers.--In every sale of electric energy for resale, the  
12 seller shall provide to the purchaser the information respecting the type of energy resource used  
13 to generate the electric energy and the environmental attributes of the generation required by  
14 rules established under subsection (a).

15          "(d) Federal Trade Commission Enforcement.--A violation of a rule prescribed under this  
16 section shall constitute an unfair or deceptive act or practice in violation of section 5 of the  
17 Federal Trade Commission Act (15 U.S.C. 45) and shall be treated as a violation of a rule under  
18 section 18 of the Federal Trade Commission Act (15 U.S.C. 57a). All functions and powers of  
19 the Federal Trade Commission under the Federal Trade Commission Act are available to enforce  
20 compliance with this section notwithstanding jurisdictional limitations in the Federal Trade  
21 Commission Act.

1           "(e) Authority to Obtain Information.--Authority to obtain information under section 11  
2 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796) is available  
3 to the Secretary to administer this section and to the Federal Trade Commission to enforce this  
4 section. In order to carry out its duties under this section, the Federal Trade Commission may  
5 use any of its powers under sections 3, 6, 9, and 20 of the Federal Trade Commission Act (15  
6 U.S.C. 43, 46, 49, and 57b-2) without regard to the limitations contained in section 20(b) of that  
7 Act (15 U.S.C. 57b-2(b)) or any jurisdictional limitations contained in that Act.

8           "(f) Enforcement by States.--(1) When a State determines that the interests of its residents  
9 have been or are being threatened or adversely affected because any person is violating or has  
10 violated a rule of the Secretary under this section, the State may bring a civil action on behalf of  
11 its residents in an appropriate district court of the United States to--

12                   "(A) enjoin the violation;

13                   "(B) enforce compliance with the rule of the Secretary;

14                   "(C) obtain damages, restitution, or other compensation on behalf of its residents;

15           or

16                   "(D) obtain other relief the court considers appropriate.

17           “(2) The State shall serve prior written notice of any civil action under this subsection  
18 upon the Federal Trade Commission and provide the Federal Trade Commission with a copy of  
19 its complaint, except that if it is not feasible for the State to provide this prior notice, the State  
20 shall serve the notice immediately upon instituting the action. Upon receiving a notice  
21 respecting a civil action, the Federal Trade Commission may--

1                   "(A) intervene in the action, and

2                   "(B) upon so intervening, be heard on all matters arising in the action and file  
3 petition for appeal.

4                   “(3) For purposes of bringing any civil action under this subsection, this section does not  
5 prevent a State official from exercising the powers conferred by State law to conduct  
6 investigations, administer oaths or affirmations, or compel the attendance of witnesses or the  
7 production of documentary and other evidence.

8                   “(4) While a civil action instituted by or on behalf of the Federal Trade Commission for  
9 violation of any rule prescribed under this subsection is pending, a State may not institute a civil  
10 action under this section against a defendant named in the complaint in the pending action for a  
11 violation alleged in the complaint.

12                   “(5) A civil action brought under this subsection may be brought in the district in which  
13 the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under  
14 section 1391 of title 28, United States Code. Process in such an action may be served in any  
15 district in which the defendant is an inhabitant or in which the defendant may be found.

16                   “(6) This section does not prohibit a State from proceeding in State court on the basis of  
17 an alleged violation of a State civil or criminal statute.”.

18                   SEC. 202. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME CONSUMERS.

19                   PURPA is amended by adding the following new section after section 119A as added by  
20 section 201 of this Act:

21                   “SEC. 119B. ACCESS TO ELECTRIC SERVICE FOR LOW-INCOME CONSUMERS.

1           “(a) Definitions.--For purposes of this section ‘low-income residential consumer’ is a  
2 household, as defined in section 2603(4) of the Low-Income Home Energy Assistance Act of  
3 1981 (42 U.S.C. 8622(4)), with an annual income that--

4                   “(1) does not exceed 60 percent of the State median income, as defined in section  
5 2603(9) of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8622(9)),  
6 of the State where the household is located, or

7                   “(2) meets the eligibility criteria for a low-income energy program operated by the  
8 State where the household is located.

9           “(b) Applicability.--Each State regulatory authority and nonregulated distribution utility  
10 that files a notice of retail competition under section 609 of this Act shall conduct a proceeding  
11 to determine whether to apply the principles of subsection (c).

12           “(c) Principles.--The following are principles for providing electric service to low-income  
13 residential consumers:

14                   “(1) A State regulatory authority or nonregulated distribution utility shall assure  
15 that its low-income residential consumers obtain benefits from retail competition  
16 comparable to its other residential consumers.

17                   “(2) As a condition of offering retail service to residential consumers in a State, a  
18 retail electric supplier shall agree to--

19                           “(A) offer, promote, and provide, upon request, retail electric service to a  
20 low-income residential consumer on rates, terms, and conditions comparable to  
21 those offered to other residential consumers located in the same area where the

1 low-income residential consumer is located, and

2 “(B) share equitably with other retail electric suppliers in the State any  
3 costs necessary to provide service to low-income residential consumers under  
4 subparagraph (A).”.

5 SEC. 203. UNFAIR TRADE PRACTICES.

6 The Federal Trade Commission Act (15 U.S.C. 41 et. seq.) is amended by inserting the  
7 following new section after section 5:

8 “SEC. 5A. ELECTRICITY SUPPLY UNFAIR TRADE PRACTICES.

9 “(a) DEFINITION.—For purposes of this section, ‘retail electric supplier’ has the meaning  
10 given that term in section 3(25) of the Public Utility Regulatory Policies Act of 1978.

11 “(b) SLAMMING.—(1) The Federal Trade Commission shall establish rules in accordance  
12 with section 553 of title 5, United States Code for the submittal and verification of a retail  
13 electric customer’s selection or change in selection of a retail electric supplier and for the  
14 assessment of penalties for violation of these rules. These rules shall ensure that the customer  
15 receives electric service from the retail electric supplier of the customer’s choice.

16 “(2) A person shall not submit or change the selection made by a retail electric customer  
17 except in accordance with procedures established in paragraph (1).

18 “(c) CRAMMING.—(1) The Federal Trade Commission shall establish rules in  
19 accordance with section 553 of title 5, United States Code for obtaining the consent of a retail  
20 electric customer for purchase of goods and services other than those expressly authorized by law  
21 or by the customer’s electricity supply and metering agreement and for the assessment of

1 penalties for violation of these rules.

2 “(2) A person shall not charge a retail electric customer for a particular service except in  
3 accordance with procedures established in paragraph (1).

4 “(d) FEDERAL TRADE COMMISSION ENFORCEMENT.--Violation of this section or  
5 of a rule prescribed under this section constitutes an unfair and deceptive act or practice in  
6 violation of section 5 of this Act and shall be treated as a violation of a rule under section 18 of  
7 this Act. All functions and powers of the Federal Trade Commission under this Act are available  
8 to the Federal Trade Commission to enforce compliance with this section notwithstanding any  
9 jurisdictional limitations in this Act.

10 “(e) STATE PROCEEDINGS AND OTHER REMEDIES.--(1) This section does not  
11 preclude a State or State commission from prescribing and enforcing additional laws, regulations,  
12 or procedures regarding the practices which are the subject of this section, so long as such laws,  
13 regulations or procedures do not conflict with the provisions of this section or with any rule  
14 prescribed by the FTC pursuant to it.

15 “(2) The remedies provided by this section are in addition to any other remedies available  
16 by law.”.

17 SEC. 204. RESIDENTIAL ELECTRICITY CONSUMER DATABASE.

18 PURPA is amended by adding the following new section after section 119B as added by  
19 section 202 of this Act:

20 “SEC. 119C. RESIDENTIAL ELECTRICITY CONSUMER DATABASE.

21 “(a) Database.--The Secretary is authorized to compile a database to provide residential

1 electric consumers with information to compare the offers of various retail electric suppliers.

2 “(b) Information.--A retail electric supplier who provides electric consumers with  
3 information under section 119A shall provide the Secretary the same information and any other  
4 information the Secretary considers appropriate for purposes of this section.

5 “(c) Content.--The database under this program shall--

6 “(1) compare the rates, terms, and conditions of the service offered by the various  
7 retail electric suppliers based on the information provided under subsection (b);

8 “(2) disseminate the comparison to consumers through various communications  
9 channels, including the Internet; and

10 “(3) provide other information the Secretary considers appropriate to carry out the  
11 purposes of this section.”.

## 12 SEC. 205. MODEL RETAIL SUPPLIER CODE.

13 PURPA is amended by adding the following new section after section 119C as added by  
14 section 204 of this Act:

### 15 “SEC. 119D. MODEL CODE FOR RETAIL SUPPLIERS.

16 “The Secretary shall develop by rule and circulate among the States for their  
17 consideration a model code for the regulation of retail electric suppliers for the protection of  
18 electric consumers.”.

## 19 SEC. 206. MODEL ELECTRIC UTILITY WORKER CODE.

20 PURPA is amended by adding the following new section after section 119D as added by  
21 section 205 of this Act:

1 “SEC. 119E. MODEL CODE FOR ELECTRIC UTILITY WORKERS.

2 “(a) The Secretary shall develop by rule and circulate among the States for their  
3 consideration a model code containing standards for electric facility workers to ensure electric  
4 facility safety and reliability. The Secretary, in developing these standards, shall consult with all  
5 interested parties, including representatives of electric facility workers.

6 “(b) In issuing a model code under this section, the Secretary shall not, for purposes of  
7 section 653 of Title 29, be deemed to be exercising statutory authority to prescribe or enforce  
8 standards or regulations affecting occupational safety and health.”

9 TITLE III. FACILITATING STATE AND REGIONAL REGULATION

10 SEC. 301. CLARIFICATION OF STATE AND FEDERAL AUTHORITY OVER RETAIL  
11 TRANSMISSION SERVICES.

12 (a) Nonpreemption of State and Nonregulated Utility Authority to Order Retail Wheeling  
13 and to Impose Local Delivery Charges.-- Section 201(b) of the Federal Power Act (referred to in  
14 this Act as "the FPA") is amended by adding the following new paragraph after paragraph (2):

15 “(3) This Act does not preempt or otherwise affect any authority under the law of a State  
16 or municipality to--

17 “(A) require unbundled transmission and local distribution services for the  
18 delivery of electric energy directly to an ultimate consumer, but if unbundled  
19 transmission is in interstate commerce, the rates, terms, and conditions of the  
20 transmission are subject to the exclusive jurisdiction of the Commission under this Part,  
21 or



1           “(B) impose a delivery charge on an ultimate consumer’s receipt of electric  
2 energy.”.

3           (b) Open Access Transmission Authority; Retail Wheeling in Retail Competition States.

4           (1) Applicability of Open Access Transmission Rules.--Section 206 of the FPA is  
5 amended by adding the following new subsection after subsection (d):

6           “(e) Open Access Transmission Services.--(1) Under section 205 and this section, the  
7 Commission may require, by rule or order, public utilities to provide open access transmission  
8 services, subject to section 212(h), and may authorize recovery of stranded costs, as defined by  
9 the Commission, arising from any requirement to provide open access transmission services.  
10 This section applies to any rule or order issued by the Commission before the date of enactment  
11 of the Comprehensive Electricity Competition Act.”.

12           (2) Authority to Order Retail Wheeling.--Section 212(h) of the FPA is amended--

13                   (A) by inserting "(1)" before "No";

14                   (B) by striking "(1)", "(2)", "(A)", and "(B)" and inserting in their places  
15 "(A)", "(B)", "(i)", and "(ii)" respectively;

16                   (C) by striking from redesignated paragraph (1)(B)(ii) "the date of  
17 enactment of this subsection" and inserting "October 24, 1992," in its place; and

18                   (D) by adding at the end a new paragraph as follows:

19           “(2) Notwithstanding paragraph (1), the Commission may issue an order that  
20 requires the transmission of electric energy directly or indirectly to an ultimate consumer  
21 if a notice of retail competition under section 609 of the Public Utility Regulatory

1 Policies Act of 1978 has been filed and is in effect with respect to the ultimate  
2 consumer's distribution utility or if a distribution utility offers open access to its delivery  
3 facilities to the ultimate consumer."

4 (3) Conforming Amendments.--

5 (A) Section 3(23) of the FPA is amended to read as follows:

6 "(23) 'transmitting utility' means any entity that owns, controls, or operates  
7 electric power transmission facilities that are used for the sale of electric energy in the 48  
8 contiguous States and the District of Columbia, notwithstanding section 201(f) of this  
9 Act;"

10 (B) Section 3(24) of the FPA is amended to read as follows:

11 "(24) 'transmission services' means the transmission of electric energy sold or to  
12 be sold;"

13 (C) Section 211(a) of the FPA is amended by striking "for resale".

14 (D) Section 212(a) of the FPA is amended by striking "wholesale" each  
15 time it appears, except the last time.

16 (c) Applicability of Commission Jurisdiction to Transmitting Utilities.--Section 206(e) of  
17 the FPA as added by subsection (b)(1) of this section is amended by adding the following new  
18 paragraphs after paragraph (1):

19 "(2)(A) The Commission has jurisdiction over the rates, terms, and conditions for  
20 transmission services provided by a transmitting utility that is not a public utility or covered by  
21 section 201A, subject to section 212(h), and may authorize recovery of stranded costs, as defined

1 by the Commission, by such transmitting utility. The Commission may require, by rule or order,  
2 a transmitting utility that is not a public utility or covered by section 201A to provide open  
3 access transmission services, subject to section 212(h).

4 "(B) In exercising its authority under this Act, the Commission--

5 "(i) shall take into account the different structural and operating characteristics of  
6 transmitting utilities, including the multi-tier structure and the not-for-profit operations of  
7 electric cooperatives;

8 "(ii) with respect to any transmitting utility that has outstanding loans made or  
9 guaranteed by the Rural Utilities Service, shall take into account the policies of the  
10 Department of Agriculture in implementing the Rural Electrification Act of 1936 and  
11 shall assure, to the extent practicable, that the utility will be able to meet any loan  
12 obligations under that Act; and

13 "(iii) shall not approve rates, terms, or conditions the Commission determines  
14 would have the effect of jeopardizing the tax exempt status of nonprofit electric  
15 cooperatives under the Internal Revenue Code of 1986.

16 "(C) Notwithstanding any other law, section 205, this section, and part III apply to a  
17 transmitting utility that is not a public utility or covered by section 201A for purposes of this  
18 section.

19 "(3) Any electric utility that owns, directly or indirectly, generation facilities financed in  
20 whole or in part with outstanding loans made or guaranteed by the Rural Utilities Service may  
21 apply to the Commission to impose a charge for the recovery of stranded costs as defined by the

Commission. If the Commission determines that the proposed charge is just, reasonable, and not unduly discriminatory or preferential, the Commission may issue an order providing for the imposition of the charge on transmission service by the applicant or by another transmitting utility or on any electric utility or transaction subject to the Commission's jurisdiction.”.

(d) Notice to and Intervention of Secretary of Agriculture in FERC Proceedings – The FPA is amended by adding after section 218, as added by section 601 of this Act, the following new section:

“NOTICE TO AND INTERVENTION OF SECRETARY OF AGRICULTURE  
IN COMMISSION PROCEEDINGS

“SEC. 219. Any person filing a complaint or petition for rulemaking under Part II of the FPA that directly affects an electric utility with loans made or guaranteed under the Rural Electrification Act of 1936 shall provide notice of such complaint or petition to the Secretary of Agriculture. The Secretary of the Agriculture may as a matter of right intervene or otherwise participate in any proceeding before the Commission that directly affects an electric utility with loans made or guaranteed under the Rural Electrification Act of 1936. The Secretary of Agriculture shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof.”.

SEC. 302. INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING.

The FPA is amended by adding after section 214 the following new section:

1 "INTERSTATE COMPACTS ON REGIONAL TRANSMISSION PLANNING

2 "SEC. 215. (a) The consent of Congress is given for an agreement to establish a regional  
3 transmission planning agency, if the Commission determines that the agreement would--

4 "(1) facilitate coordination among the States within a particular region with regard  
5 to the planning of future transmission, generation, and distribution facilities,

6 "(2) carry out State electric facility siting responsibilities more effectively,

7 "(3) meet the other requirements of this section and rules prescribed by the  
8 Commission under this section, and

9 "(4) otherwise be consistent with the public interest.

10 "(b)(1) If the Commission determines that an agreement meets the requirements of  
11 subsection (a), the agency established under the agreement has the authority necessary or  
12 appropriate to carry out the agreement. This authority includes authority with respect to matters  
13 otherwise within the jurisdiction of the Commission, if expressly provided for in the agreement  
14 and approved by the Commission.

15 "(2) The Commission's determination under this section may be subject to any terms or  
16 conditions the Commission determines are necessary to ensure that the agreement is in the public  
17 interest.

18 "(c)(1) The Commission shall prescribe--

19 "(A) criteria for determining whether a regional transmission planning agreement  
20 meets subsection (a), and

21 "(B) standards for the administration of a regional transmission planning agency

1 established under the agreement.

2 "(2) The criteria shall provide that, in order to meet subsection (a)--

3 "(A) a regional transmission planning agency must operate within a region that  
4 includes all tribal governments and all or part of each State that is a party to the  
5 agreement,

6 "(B) a regional transmission planning agency must be composed of one or more  
7 members from each State and tribal government that is a party to the agreement,

8 "(C) each participating State and tribal government must vest in the regional  
9 transmission planning agency the authority necessary to carry out the agreement and this  
10 section, and

11 "(D) the agency must follow workable and fair procedures in making its decisions,  
12 in governing itself, and in regulating parties to the agreement with respect to matters  
13 covered by the agreement, including a requirement that all decisions of the agency be  
14 made by majority vote (or majority of weighted votes) of the members present and  
15 voting.

16 "(3) The criteria may include any other requirement for meeting subsection (a) that the  
17 Commission determines is necessary to ensure that the regional transmission planning agency's  
18 organization, practices, and procedures are sufficient to carry out this section and the rules issued  
19 under it.

20 "(d) The Commission, after notice and opportunity for comment, may terminate the  
21 approval of an agreement under this section at any time if it determines that the regional

1 transmission planning agency fails to comply with this section or Commission prescriptions  
2 under subsection (c) or that the agreement is contrary to the public interest.

3 "(e) Section 313 applies to a rehearing before a regional transmission planning agency  
4 and judicial review of any action of a regional transmission planning agency. For this purpose,  
5 when section 313 refers to "Commission", substitute "regional transmission planning agency"  
6 and when section 313(b) refers to "licensee or public utility", substitute "entity".

7 SEC. 303. BACKUP AUTHORITY TO IMPOSE A CHARGE ON AN ULTIMATE  
8 CONSUMER'S RECEIPT OF ELECTRIC ENERGY.

9 The FPA is amended by adding the following new section after section 215 as added by  
10 section 302 of this Act:

11 "BACKUP AUTHORITY FOR CHARGE ON RECEIPT OF ELECTRIC ENERGY

12 "SEC. 216. (a) If a State regulatory authority that has provided notice of retail  
13 competition under section 609 of the Public Utility Regulatory Policies Act of 1978 for a  
14 distribution utility determines that the utility should be authorized or required to impose a charge  
15 on an ultimate consumer's receipt of electric energy but the State regulatory authority lacks  
16 authority to authorize or require imposition of such a charge, the State regulatory authority may  
17 apply to the Commission for an order providing for the imposition of the charge. If the  
18 Commission determines that the imposition of the charge is just, reasonable, and not unduly  
19 discriminatory or preferential; is consistent with the State regulatory authority's policy regarding  
20 the imposition of the charge; and is not prohibited by State law, the Commission may issue an  
21 order providing for the imposition of the charge.

1           "(b) If a nonregulated utility that has outstanding loans made or guaranteed by the Rural  
2       Utilities Service and that has filed a notice of retail competition under section 609 of the Public  
3       Utilities Regulatory Policies Act of 1978 determines that it is appropriate to impose a charge on  
4       an ultimate consumer's receipt of electric energy, but lacks the authority to impose such a charge  
5       under State law, the utility may apply to the Commission for an order providing for the  
6       imposition of a charge. If the Commission determines that the proposed charge is just,  
7       reasonable, and not unduly discriminatory or preferential, the Commission may issue an order  
8       providing for the imposition of the charge."

9       SEC. 304. AUTHORITY TO ESTABLISH AND REQUIRE INDEPENDENT REGIONAL  
10      SYSTEM OPERATION.

11           Section 202 of the FPA is amended by adding the following new subsections after  
12      subsection (g):

13           “(h) Upon its own motion or upon application or complaint and after notice and an  
14      opportunity for a hearing, the Commission may order the establishment of entities for the  
15      purpose of independent operation, control, and planning of interconnected transmission facilities;  
16      order a transmitting utility to relinquish control over operation of its transmission facilities to an  
17      entity for the purpose of independent operation, control, and planning of interconnected  
18      transmission facilities; subject generators to the control of such entity consistent with other laws to  
19      the extent necessary to permit reliable operation of the transmission facilities; or take any  
20      combination of these actions , if the Commission finds that–

21           “(1) this action is appropriate to promote competitive electricity markets and



1 efficient, economical, and reliable operation of the interstate transmission grid;

2 “(2) the entity established for the purpose of independent operation, control, and  
3 planning of interconnected transmission facilities will operate, control, and plan the  
4 transmission facilities in a manner that assures that--

5 “(A) ownership of transmission facilities provides no advantage in  
6 competitive electricity markets;

7 “(B) the transmission customers of the Tennessee Valley Authority  
8 (TVA), the Bonneville Power Administration, the Southwestern Power  
9 Administration (SWPA), and the Western Area Power Administration (WAPA)

10 will not pay an unreasonable share of the entity’s costs and will not experience  
11 unreasonable transmission rate increases resulting from the establishment of the  
12 entity; and

13 “(C) as applicable, the respective statutory and treaty obligations and  
14 contractual obligations existing on the date of enactment of this Act of the TVA  
15 Board of Directors, the Bonneville Administrator, the SWPA Administrator, the  
16 WAPA Administrator, the Bureau of Reclamation, and the Corps of Engineers  
17 can be met;

18 “(3) any transmitting utility ordered to transfer control of its transmission facilities  
19 will receive just and reasonable compensation for the use of its facilities, consistent with  
20 section 201A where applicable; and

21 “(4) adequate reliability of the affected transmission facilities will be maintained.

1 Nothing in this section limits States from addressing transmission facility maintenance, planning,  
2 siting, and other utility functions in a manner consistent with this Act or Commission action  
3 under this Act.

4 “(i) If not ordered under subsection (h), TVA, the Bonneville Administrator, the SWPA  
5 Administrator, or the WAPA Administrator are authorized to participate in a regional  
6 transmission system operation after conducting a public process in the relevant service area to  
7 receive comments. Notwithstanding any other law, participation may include delegation of  
8 operation and control of the Authority or Administration’s transmission system to that entity, or  
9 other method of participation, under terms and conditions the Authority or Administrator  
10 determines necessary or appropriate, including being bound by operational and other orders of  
11 the entity and by the results of arbitration of disputes with the entity or with other participants.”.

#### 12 TITLE IV. PUBLIC BENEFITS

##### 13 SEC. 401. PUBLIC BENEFITS FUND.

14 PURPA is amended by adding after section 609, as added by section 101 of this Act, the  
15 following new section:

##### 16 "SEC. 610. PUBLIC BENEFITS FUND.

17 "(a) Definitions.--For purposes of this section--

18 "(1) the term 'Board' means the Joint Board established under subsection (b)(1);

19 "(2) the term 'eligible public purpose program' means a program that supports one  
20 or more of the following--

21 "(A) availability of affordable electricity service to low-income customers,

1                   "(B) implementation of energy conservation and energy efficiency  
2                   measures and energy management practices,

3                   "(C) consumer education,

4                   “(D) the development and demonstration of an electricity generation  
5                   technology that the Secretary determines is emerging from research and  
6                   development, provides environmental benefits, and--

7                   "(i) has significant national commercial potential, or

8                   "(ii) provides energy security or generation resource diversity  
9                   benefits, or

10                  "(E) rural assistance subsequent to a determination made under subsection  
11                  (d)(4);

12                  "(3) the term 'fiscal agent' means the entity designated under subsection (b)(2)(B);

13                  "(4) the term 'Fund' means the Public Benefits Fund established under subsection  
14                  (b)(2)(A); and

15                  “(5) the term 'State' means each of the 48 contiguous States and the District of  
16                  Columbia.

17                  "(b) Joint Board.--(1) A Joint Board is established whose membership is composed of  
18                  two officers or employees of the United States Government appointed by the Secretary, four  
19                  State commissioners appointed by the national organization of State commissions, and one  
20                  member of an Indian tribal government appointed by the Secretary. The Secretary shall  
21                  designate the Chair of the Board.

1           "(2) The Board shall--

2                   "(A) establish a Public Benefits Fund upon petition of States and tribal  
3 governments wishing to participate in the program under this section,

4                   "(B) appoint a fiscal agent, from persons nominated by the States and tribal  
5 governments petitioning to establish the Fund, and

6                   "(C) administer the Fund as set forth in this section.

7           "(c) Fiscal Agent.--The fiscal agent appointed by the Board shall collect and disburse the  
8 amounts in the Fund as set forth in this section.

9           "(d) Secretary.--The Secretary shall prescribe rules for--

10                   "(1) the determination of charges under subsection (e);

11                   "(2) the collection of amounts for the Fund, including provisions for  
12 overcollection or undercollection;

13                   "(3) distribution of amounts from the Fund; and

14                   "(4) the criteria under which the Board determines whether a State or tribal  
15 government's program is an eligible public purpose program, including a rural assistance  
16 program. A rural assistance program shall be an eligible public purpose program to the  
17 extent that the Secretary, in consultation with the Secretary of Agriculture, determines by  
18 rule that significant adverse economic effects on rural customers have occurred or will  
19 occur as a result of electricity restructuring that meets the retail competition requirements  
20 of this Act. After such a determination is made, the Secretary, in consultation with the  
21 Secretary of Agriculture, shall specify by rule the mechanism for distribution of funds to

1 rural assistance programs, amounts to be provided, and variances to the overall  
2 requirements to the Public Benefits Fund under this section, if any. For the purposes of  
3 funding rural assistance programs, the Secretary shall increase the charge for the Public  
4 Benefit Fund as necessary, up to a maximum of .17 mills per kilowatt hour. Funding for  
5 rural assistance programs under this section shall be provided exclusively from this  
6 increase in the charge.

7 "(e) Public Benefits Charge.--(1) As a condition of existing or future interconnection with  
8 facilities of any transmitting utility, each owner of an electric generating facility whose capacity  
9 exceeds one megawatt shall pay the transmitting utility a public benefits charge determined  
10 under paragraph (2), even if the generation facility and the transmitting facility are under  
11 common ownership or are otherwise affiliated. Each importer of electric energy from Canada or  
12 Mexico, as a condition of existing or future interconnection with facilities of any transmitting  
13 utility in the United States, shall pay this same charge for imported electric energy. The  
14 transmitting utility shall pay the amounts collected to the fiscal agent at the close of each month,  
15 and the fiscal agent shall deposit the amounts into the Fund as offsetting collections.

16 "(2)(A) The Board shall notify the Commission of the sum of the requests of all States  
17 and tribal governments under subsection (f) within 30 days after receiving the requests.

18 "(B) The Commission shall calculate the rate for the public benefits charge for each  
19 calendar year at an amount, not in excess of 1 mill per kilowatt-hour, equal to the sum of the  
20 requests of all States and tribal governments under subsection (f) for programs described in  
21 subsection (a)(2)(A) through (a)(2)(D), but not to exceed \$3 billion per year, divided by the

1 estimated kilowatt hours of electric energy to be generated by generators subject to the charge.  
2 Amounts collected in excess of \$3 billion in a fiscal year shall be retained in the fund and the  
3 assessment in the following year shall be reduced by that amount. If there are more than de  
4 minimis receipts from the sale of Renewable Energy Credits under section 611, the Secretary  
5 shall direct the Commission to reduce the charge to reflect the amount of receipts received from  
6 the sale of Credits. The amount of the receipts from the sale of Renewable Energy Credits  
7 deposited in the Public Benefits Fund may not exceed \$3 billion per year adjusted for inflation.  
8 Receipts from the sale of Renewable Energy Credits in excess of \$3 billion per year adjusted for  
9 inflation shall be deposited in the General Fund of the Treasury.

10 "(C) If a finding is made under subsection (d)(4) in relation to rural customers, the public  
11 benefit charge shall be increased as indicated under subsection (d)(4).

12 "(f) State and Tribal Government Participation.--(1) Not later than 90 days before the  
13 beginning of each calendar year, each State and tribal government seeking to participate in the  
14 Fund shall submit to the Board a request for payments from the Fund for the calendar year in an  
15 amount not in excess of 50 percent of the State or tribal government's estimated expenditures for  
16 eligible public purpose programs for the year, except as provided under rules issued under  
17 subsection (d)(4) for rural assistance programs.

18 "(2) To the extent a State or tribal government generates all or part of its funds for  
19 eligible public purpose programs through a wires charge on an ultimate consumer's receipt of  
20 electric energy, the State or tribal government shall impose the charge on a non-discriminatory  
21 basis on all consumers within the State or tribal government jurisdiction.

1           “(3) Notwithstanding subsection (a)(5)--

2                   “(A) Alaska may participate in the Fund as a State if it certifies to the Board that  
3           all generators within Alaska with a nameplate capacity exceeding one megawatt shall pay  
4           into the Fund at the rate calculated by the Board during the year in which Alaska seeks  
5           matching funds, and

6                   “(B) Hawaii may participate in the Fund as a State if it certifies to the Board that  
7           all generators within Hawaii with a nameplate capacity exceeding one megawatt shall pay  
8           into the Fund at the rate calculated by the Board during the year in which Hawaii seeks  
9           matching funds.

10           “(g) Disbursal from the Fund.--(1) The Board shall review State and tribal government  
11           submissions and determine whether programs designated by the State or tribal government are  
12           eligible public purpose programs, using the criteria prescribed under subsection (d), and whether  
13           there is reasonable assurance that spending qualifying as State or tribal government matching  
14           funds will occur.

15           “(2) The fiscal agent shall disburse amounts in the Fund to participating States and tribal  
16           governments to carry out eligible public purpose programs in accordance with this subsection  
17           and rules prescribed under subsection (d).

18           “(3) To the extent the aggregate amount of funds requested by the States and tribal  
19           governments exceeds the maximum aggregate revenues eligible to be collected under subsection  
20           (e) and deposited as payment for Renewable Energy Credits under section 611, the fiscal agent  
21           shall reduce each participating State and tribal government's request proportionately.

1           "(4)(A) The fiscal agent shall disburse amounts for a calendar year from the Fund to a  
2     State or tribal government in twelve equal monthly payments beginning two months after the  
3     beginning of the calendar year. Amounts disbursed may not exceed the lesser of the State or  
4     tribal government's request for the fiscal year, after any reduction required under paragraph (3),  
5     or 50 percent of the State or tribal government's documented expenditures for eligible public  
6     purpose programs for the calendar year, except as provided under rules issued under subsection  
7     (d)(4) for rural assistance programs.

8           "(B) The fiscal agent shall make distributions to the State or tribal government or to an  
9     entity designated by the State or tribal government to receive payments. The State or tribal  
10    government may designate a nonregulated utility as an entity to receive payments under this  
11    section.

12          "(C) A State or tribal government may use amounts received only for the eligible public  
13    purpose programs the State or tribal government designated in its submission to the Board and  
14    the Board determined eligible.

15          “(h) Report.--One year before the date of expiration of this section, the Secretary shall  
16    report to Congress, after consultation with the Board, whether a public benefits fund should  
17    continue to exist.

18          "(i) Sunset.--This section expires at midnight on December 31 of the fifteenth year after  
19    the year the Comprehensive Electricity Competition Act is enacted, except with regard to charges  
20    and funding for rural assistance programs."

21    SEC. 402. FEDERAL RENEWABLE PORTFOLIO STANDARD.



(a) Standard.--PURPA is amended by adding after section 610, as added by section 401 of this Act, the following new section:

"SEC. 611. FEDERAL RENEWABLE PORTFOLIO STANDARD.

"(a) Minimum Renewable Generation Requirement.--(1) For each calendar year beginning with 2000, a retail electric supplier shall submit to the Secretary Renewable Energy Credits in an amount equal to the required annual percentage, specified in subsection (b), of the total electric energy sold by the retail electric supplier to electric consumers in the calendar year. The retail electric supplier shall make this submission before April 1 of the following calendar year.

"(2) For purposes of this section a 'renewable energy' resource means solar energy, wind, geothermal, or biomass.

"(3) This section does not preclude a State from requiring additional renewable energy generation in that State.

"(b) Required Annual Percentage.--(1) The Secretary shall determine the required annual percentage that is to be applied to all retail electric suppliers for calendar years 2000--2004. This required annual percentage shall be equal to the percent of the total electric energy sold, during the most recent calendar year for which information is available before the calendar year of the enactment of this section, by retail electric suppliers to electric customers in the United States that is renewable energy.

"(2) The Secretary shall determine the required annual percentage for all retail electric suppliers for calendar years 2005-2009. This percentage shall be above the percentage in

paragraph (1) and below the percentage in paragraph (3) and shall be selected to promote a smooth transition to the level in paragraph (3).

"(3) For calendar years 2010-2015, the required annual percentage is 7.5 percent.

"(c) Submission of Credits.--A retail electric supplier may satisfy the requirements of subsection (a) through the submission of--

"(1) Renewable Energy Credits issued under subsection (d) for renewable energy generated by the retail electric supplier in the calendar year for which Credits are being submitted or any previous calendar year,

"(2) Renewable Energy Credits issued under subsection (d) to any renewable energy generator for renewable energy generated in the calendar year for which Credits are being submitted or a previous calendar year and acquired by the retail electric supplier, or

"(3) any combination of Credits under paragraphs (1) and (2).

"(d) Issuance of Credits.--(1) The Secretary shall establish, not later than one year after the date of enactment of this section, a program to issue, monitor the sale or exchange of, and track Renewable Energy Credits.

"(2) Under the program, an entity that generates electric energy through the use of a renewable energy resource may apply to the Secretary for the issuance of Renewable Energy Credits. The application shall indicate--

"(A) the type of renewable energy resource used to produce the electricity,

"(B) the State in which the electric energy was produced, and

1                   "(C) any other information the Secretary determines appropriate.

2                   "(3) (A) Except as provided in paragraph (B), the Secretary shall issue to an entity one  
3       Renewable Energy Credit for each kilowatt-hour of electric energy the entity generates through  
4       the use of a renewable energy resource in any State in 2000 and any succeeding year.

5                   “(B) The Secretary shall issue two Renewable Energy Credits for each kilowatt-hour of  
6       electric energy generated through the use of a renewable energy resource in any State in 2000  
7       and any succeeding year, if the generating facility is located on Indian land. For purposes of this  
8       paragraph, renewable energy generated by biomass cofired with other fuels is eligible for two  
9       credits only if the biomass was grown on the land eligible under this paragraph.

10                  “(C) To be eligible for a Renewable Energy Credit, the unit of electricity generated  
11       through the use of a renewable energy resource may be sold or may be used by the generator. If  
12       both a renewable energy resource and a non-renewable energy resource are used to generate the  
13       electric energy, the Secretary shall issue credits based on the proportion of the renewable energy  
14       resource used. The Secretary shall identify Renewable Energy Credits by type of generation and  
15       by the State in which the generating facility is located.

16                  "(4) In order to receive a Renewable Energy Credit, the recipient of a Renewable Energy  
17       Credit shall pay a fee, calculated by the Secretary, in an amount that is equal to the  
18       administrative costs of issuing, recording, monitoring the sale or exchange of, and tracking the  
19       Credit or does not exceed five percent of the dollar value of the Credit, whichever is lower. The  
20       Secretary shall retain the fee and use it to pay these administrative costs.

21                  "(5) When a generator sells electric energy generated through the use of a renewable

1 energy resource to a retail electric supplier under a contract subject to section 210 of this Act, the  
2 retail electric supplier is treated as the generator of the electric energy for the purposes of this  
3 section for the duration of the contract.

4 "(6) The Secretary shall disqualify an otherwise eligible renewable energy generator from  
5 receiving a Renewable Energy Credit if the generator has elected to participate in net metering  
6 under section 612.

7 "(7) If a generator using a renewable energy resource receives matching funds under  
8 section 610, the Secretary shall reduce the number of Renewable Energy Credits the generator  
9 receives under paragraph (3) so that the aggregate value of those Credits plus the matching funds  
10 received under section 610 equals the aggregate value of the Credits the generator would have  
11 received absent this paragraph. For purposes of this paragraph, the Secretary shall value a Credit  
12 at a price that is representative of the price of a Credit in private transactions. In no event shall  
13 the Secretary use a price to establish values for purposes of this paragraph that exceeds the cost  
14 cap established under subsection (f).

15 "(e) Sale or Exchange.--A Renewable Energy Credit may be sold or exchanged by the  
16 entity to whom issued or by any other entity who acquires the Credit. A Renewable Energy  
17 Credit for any year that is not used to satisfy the minimum renewable generation requirement of  
18 subsection (a) for that year may be carried forward for use in another year.

19 "(f) Renewable Energy Credit Cost Cap.--Beginning January 1, 2000, the Secretary shall  
20 offer Renewable Energy Credits for sale. The Secretary shall charge 1.5 cents for each  
21 Renewable Energy Credit sold during calendar year 2000, and on January 1 of each following

1 year, the Secretary shall adjust for inflation, based on the Consumer Price Index, the price  
2 charged per Credit for that calendar year. The Secretary shall deposit in the Public Benefits Fund  
3 established under section 610 the amount received from a sale under this subsection.

4 "(g) Enforcement.--The Secretary may bring an action in the appropriate United States  
5 district court to impose a civil penalty on a retail electric supplier that does not comply with  
6 subsection (a). A retail electric supplier who does not submit the required number of Renewable  
7 Energy Credits under subsection (a) is subject to a civil penalty of not more than three times the  
8 value of the Renewable Energy Credits not submitted. For purposes of this subsection, the value  
9 of a Renewable Energy Credit is the price of a Credit determined under subsection (f) for the  
10 year the Credits were not submitted.

11 "(h) Information Collection.--The Secretary may collect the information necessary to  
12 verify and audit--

13 "(1) the annual electric energy generation and renewable energy generation of any  
14 entity applying for Renewable Energy Credits under this section,

15 "(2) the validity of Renewable Energy Credits submitted by a retail electric  
16 supplier to the Secretary, and

17 "(3) the quantity of electricity sales of all retail electric suppliers.

18 "(i) Sunset.--This section expires December 31, 2015."

19 (b) Definitions.

20 Section 3 of PURPA is amended by adding after paragraph (24) as added by  
21 section 101 of this Act the following new paragraph:

1           “(25) The term 'retail electric supplier' means a person, State agency, or Federal  
2 agency that sells electric energy to an electric consumer.

3           “(26) The term ‘Indian land’ means (A) any land within the limits of any Indian  
4 reservation, pueblo or rancheria, (B) any land not with the limits of any Indian reservation,  
5 pueblo or rancheria title to which was on the date of passage of the Comprehensive  
6 Electricity Competition Act either held in trust by the United States for the benefit of any  
7 Indian tribe or individual or held by any Indian tribe or individual subject to restriction by  
8 the United States against alienation, (C) any dependent Indian community, and (D) any  
9 land conveyed to any Alaska Native corporation under the Alaska Native Claims  
10 Settlement Act.

11           “(27) The term ‘Indian tribe’ means any Indian tribe, band, group, or nation,  
12 including Alaska Indians, Aleuts, or Eskimos, or any Alaskan Native Village of the  
13 United States, which is considered an eligible recipient under the Indian Self  
14 Determination and Education Assistance Act (Public Law 93-638) or was considered an  
15 eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of  
16 such chapter.”.

17 SEC. 403. NET METERING.

18           PURPA is amended by adding the following new section after section 611 as added by  
19 section 402 of this Act:

20 "SEC. 612. NET METERING FOR RENEWABLE ENERGY.

21           “(a) Definitions.--For purposes of this section--

1           “(1) The term 'eligible on-site generating facility' means a facility on the site of an  
2           electric consumer with a peak generating capacity of 20 kilowatts or less that is fueled  
3           solely by a renewable energy resource.

4           “(2) The term 'renewable energy resource' means solar energy, wind, geothermal,  
5           or biomass.

6           “(3) The term 'net metering service' means service to an electric consumer under  
7           which electricity generated by that consumer from an eligible on-site generating facility  
8           and delivered to the distribution system through the same meter through which purchased  
9           electricity is received may be used to offset electricity provided by the retail electric  
10          supplier to the electric consumer during the applicable billing period so that an electric  
11          consumer is billed only for the net electricity consumed during the billing period, but in  
12          no event shall the net be less than zero during the applicable billing period.

13          “(b) Requirement to Provide Net Metering Service.--Each retail electric supplier shall  
14          make available upon request net metering service to any retail electric consumer whom the  
15          supplier currently serves or solicits for service.

16          “(c) State Authority.--This section does not preclude a State from imposing additional  
17          requirements consistent with the requirements in this section, including the imposition of a cap  
18          limiting the amount of net metering available in the State. Nothing in this Act or any other  
19          Federal law preempts or otherwise affects authority under State law to require a retail electric  
20          supplier to make available net metering service to a retail electric consumer whom the supplier  
21          serves or offers to serve.”.

1 SEC. 404. REFORM OF SECTION 210 OF PURPA.

2 Section 210 of PURPA is amended by adding the following new subsection after  
3 subsection (l):

4 “(m) Repeal of Mandatory Purchase Requirement.--After the date of enactment of the  
5 Comprehensive Electricity Competition Act, an electric utility shall not be required to enter into  
6 a new contract or obligation to purchase electric energy under this section.”.

7 SEC. 405. INTERCONNECTIONS FOR CERTAIN FACILITIES.

8 PURPA is amended by adding the following new section after section 612 as added by  
9 section 403 of this Act:

10 “SEC. 613. INTERCONNECTIONS FOR CERTAIN FACILITIES.

11 “(a) Definition.—As used in this section ‘facility’ means—

12 “(1) a small-scale electric power generation facility that is designed to serve  
13 customers at or near the facility, or

14 “(2) a facility using a single fuel source to produce at the point of use either  
15 electric or mechanical power and thermal energy.

16 “(b) Interconnection.—A distribution utility shall allow a facility to interconnect with the  
17 distribution utility if the facility owner is located in the distribution utility’s service territory and  
18 complies with the final rule issued under subsection (c).

19 “(c) Within one year from the date of enactment of this section, the Secretary shall issue a  
20 final rule to implement subsection (b) and issue related safety and power quality standards. To  
21 the extent feasible, the Secretary shall develop the standards through a process involving



1 interested parties.

2 “(d) The Commission shall enforce the rule established under subsection (c) using its  
3 authority under this Act.”.

4 SEC. 406. RURAL AND REMOTE COMMUNITIES ELECTRIFICATION GRANTS.

5 Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940c) is amended by  
6 adding after subsection (b) the following new subsections:

7 “(c) Rural and Remote Communities Electrification Grants.—The Secretary, in  
8 consultation with the Secretary of Energy and the Secretary of the Interior, may provide grants to  
9 eligible borrowers under this Act for the purpose of increasing energy efficiency, lowering or  
10 stabilizing electric rates to end users, or providing or modernizing electric facilities for:

11 “(1) a unit of local government of a State or territory, or

12 “(2) an Indian tribe

13 that has an average cost per kilowatt hour of electricity that is at least 150 percent of the average  
14 retail price per kilowatt hour for all consumers in the United States, as determined by the  
15 Secretary using data provided by the Department of Energy. The Secretary shall issue the grants  
16 based on a determination of cost-effectiveness and most effective use of the funds to achieve the  
17 stated purposes of this section.

18 “(d) Definition. – For purposes of this section, the term ‘Indian tribe’ means any Indian  
19 tribe, band, group, or nation, including Alaska Indians, Aleuts, or Eskimos, or any Alaskan  
20 Native Village of the United States, which is considered an eligible recipient under the Indian  
21 Self Determination and Education Assistance Act (Public Law 93-638) or was considered an

1 eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such  
2 chapter.

3 “(e) Authorization.--There is authorized to be appropriated for purposes of subsection (c)  
4 \$20,000,000 for each of the seven fiscal years following enactment of this section.”.

5 SEC. 407. INDIAN TRIBE ASSISTANCE.

6 Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501-3506) is amended by—

7 (1) adding after section 2606 the following new section:

8 “SEC. 2607. TRIBAL ELECTRICITY ASSISTANCE.

9 “(a) The Secretary of Energy, in consultation with the Secretary of the Interior and the  
10 Secretary of Agriculture, shall establish a program to assist an Indian tribe to meet its electricity  
11 needs. Under the program, the Secretary shall provide, subject to appropriations, to an Indian  
12 tribe—

13 “(1) technical assistance and grants to analyze tribal electricity needs, the  
14 availability of natural resources for tribal generation of electricity, the opportunities for  
15 the improvement of transmission of electricity to the tribe, and the effect on the tribe of  
16 retail competition in the sale or transmission of electricity, and

17 “(2) in an area that is not served or served inadequately by an electric utility, as  
18 defined in section 3(4) of the Public Utility Regulatory Policies Act of 1978, or  
19 distribution utility, as defined in section 3(23) of the Public Utility Regulatory Policies  
20 Act of 1978, grants to plan and construct or improve facilities to generate, transmit, and  
21 distribute electricity to serve tribal needs.

1 In exercising authority under this section, the Secretary shall take into account the ability of  
2 entities with loans made or guaranteed under the Rural Electrification Act of 1936 to repay those  
3 loans. The Secretary shall issue the grants based on a determination of cost-effectiveness and  
4 most effective use of the funds to achieve the stated purposes of this section.

5 “(b) Definition. – For purposes of this section, the term ‘Indian tribe’ means any Indian  
6 tribe, band, group, or nation, including Alaska Indians, Aleuts, or Eskimos, or any Alaskan  
7 Native Village of the United States, which is considered an eligible recipient under the Indian  
8 Self Determination and Education Assistance Act (Public Law 93-638) or was considered an  
9 eligible recipient under chapter 67 of title 31, United States Code, prior to the repeal of such  
10 chapter.

11 “(c) There are authorized to be appropriated to the Department of Energy for each of the  
12 seven fiscal years following enactment of this section, \$5,000,000 to carry out subsection (a)(1),  
13 and \$15,000,000 to carry out subsection (a)(2).”.

#### 14 SEC. 408. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

15 Title II of the Department of Energy Organization Act is amended by adding the  
16 following new section after section 212:

#### 17 “SEC. 213. OFFICE OF INDIAN ENERGY POLICY AND PROGRAMS.

18 “(a) The Secretary may establish within the Department an Office of Indian Energy  
19 Policy and Programs. The Office shall be headed by a Director appointed by the Secretary.

20 “(b) Subject to the supervision of the Secretary, the Office is authorized to establish a  
21 program to provide, direct, foster, coordinate and implement energy, energy management, and

energy conservation programs to –

“(1) promote tribal energy efficiency;

“(2) modernize tribal electric infrastructure;

“(3) preserve tribal sovereignty and self determination related to energy matters;

“(4) lower or stabilize energy costs; and

“(5) electrify tribal members’ homes.

“(c) There are authorized to be appropriated such sums as may be necessary to implement this section.”.

#### SEC. 409. SOUTHEAST ALASKA ELECTRICAL POWER.

There is authorized to be appropriated to the Department of Energy up to a total sum of \$20,000,000 for the purpose of providing financial assistance to the State of Alaska as necessary to ensure the availability of adequate electrical power to the greater Ketchikan area in southeast Alaska, including the construction of an intertie.

### TITLE V. REGULATION OF MERGERS AND CORPORATE STRUCTURE

#### SEC. 501. REFORM OF HOLDING COMPANY REGULATION UNDER PUHCA.

Effective 18 months after the enactment of this Act, the Public Utility Holding Company Act of 1935 is repealed and the following is enacted in its place.

#### "SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Public Utility Holding Company Act of 1999'.

#### “SEC. 2. DEFINITIONS.

"For purposes of this Act –

1           "(1) the term 'affiliate' of a company means any company 5 percent or more of the  
2           outstanding voting securities of which are owned, controlled, or held with power to vote,  
3           directly or indirectly, by such company;

4           "(2) the term 'associate company' of a company means any company in the same  
5           holding company system with such company;

6           "(3) the term 'Commission' means the Federal Energy Regulatory Commission;

7           "(4) the term 'company' means a corporation, partnership, association, joint stock  
8           company, business trust, or any organized group of persons, whether incorporated or not,  
9           or a receiver, trustee, or other liquidating agent of any of the foregoing;

10          "(5) the term 'electric utility company' means any company that owns or operates  
11          facilities used for the generation, transmission, or distribution of electric energy for sale;

12          "(6) the terms 'exempt wholesale generator' and 'foreign utility company' have the  
13          same meanings as in sections 32 and 33, respectively, of the Public Utility Holding  
14          Company Act of 1935, as those sections existed on the day before the effective date of  
15          this Act;

16          "(7) the term 'gas utility company' means any company that owns or operates  
17          facilities used for distribution at retail (other than the distribution only in enclosed  
18          portable containers, or distribution to tenants or employees of the company operating  
19          such facilities for their own use and not for resale) of natural or manufactured gas for  
20          heat, light, or power;

21          "(8) the term 'holding company' means—

1                   "(A) any company that directly or indirectly owns, controls, or holds, with  
2                   power to vote, 10 percent or more of the outstanding voting securities of a public  
3                   utility company or of a holding company of any public utility company; and

4                   "(B) any person, determined by the Commission, after notice and  
5                   opportunity for hearing, to exercise directly or indirectly (either alone or pursuant  
6                   to an arrangement or understanding with one or more persons) such a controlling  
7                   influence over the management or policies of any public utility company or  
8                   holding company as to make it necessary or appropriate for the rate protection of  
9                   utility customers with respect to rates that such person be subject to the  
10                  obligations, duties, and liabilities imposed by this Act upon holding companies;

11                 "(9) the term 'holding company system' means a holding company, together with  
12                 its subsidiary companies;

13                 "(10) the term 'jurisdictional rates' means rates established by the Commission for  
14                 the transmission of electric energy, the sale of electric energy at wholesale in interstate  
15                 commerce, the transportation of natural gas, and the sale in interstate commerce of natural  
16                 gas for resale for ultimate public consumption for domestic, commercial, industrial, or  
17                 any other use;

18                 "(11) the term 'natural gas company' means a person engaged in the transportation  
19                 of natural gas in interstate commerce or the sale of such gas in interstate commerce for  
20                 resale;

21                 "(12) the term 'person' means an individual or company;

1           "(13) the term 'public utility' means any person who owns or operates facilities  
2           used for transmission of electric energy or sales of electric energy at wholesale in  
3           interstate commerce;

4           "(14) the term 'public utility company' means an electric utility company or a gas  
5           utility company;

6           "(15) the term 'State commission' means any commission, board, agency, or  
7           officer, by whatever name designated, of a State, municipality, or other political  
8           subdivision of a State that, under the laws of such State, has jurisdiction to regulate public  
9           utility companies;

10          "(16) the term 'subsidiary company' of a holding company means--

11                "(A) any company, 10 percent or more of the outstanding voting securities  
12                of which are directly or indirectly owned, controlled, or held with power to vote,  
13                by such holding company; and

14                "(B) any person, the management or policies of which the Commission,  
15                after notice and opportunity for hearing, determines to be subject to a controlling  
16                influence, directly or indirectly, by such holding company (either alone or  
17                pursuant to an arrangement or understanding with one or more other persons) so  
18                as to make it necessary for the rate protection of utility customers with respect to  
19                rates that such person be subject to the obligations, duties, and liabilities imposed  
20                by this Act upon subsidiary companies of holding companies; and

21          "(17) the term 'voting security' means any security presently entitling the owner or

holder thereof to vote in the direction or management of the affairs of a company.

### "SEC. 3. FEDERAL ACCESS TO BOOKS AND RECORDS

"(a) IN GENERAL.--Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, records, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates for the transmission of electric energy, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.

"(b) AFFILIATE COMPANIES.--Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

"(c) HOLDING COMPANY SYSTEMS.--The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the



1 protection of utility customers with respect to jurisdictional rates.

2 "(d) CONFIDENTIALITY.--No member, officer, or employee of the Commission shall  
3 divulge any fact or information that may come to his or her knowledge during the course of  
4 examination of books, accounts, memoranda, or other records as provided in this section, except  
5 as may be directed by the Commission or by a court of competent jurisdiction.

6 "SEC. 4. STATE ACCESS TO BOOKS AND RECORDS

7 "(a) IN GENERAL.--Upon the written request of a State commission having jurisdiction  
8 to regulate a public utility company in a holding company system, the holding company or any  
9 associate company or affiliate thereof, other than such public utility company, wherever located,  
10 shall produce for inspection such books, accounts, memoranda, and other records that--

11 "(1) have been identified in reasonable detail in a proceeding before the State  
12 commission;

13 "(2) the State commission deems are relevant to costs incurred by such public  
14 utility company; and

15 "(3) are necessary for the effective discharge of the responsibilities of the State  
16 commission with respect to such proceeding.

17 "(b) LIMITATION.--Subsection (a) does not apply to any person that is a holding  
18 company solely by reason of ownership of one or more qualifying facilities under the Public  
19 Utility Regulatory Policies Act of 1978.

20 "(c) CONFIDENTIALITY OF INFORMATION.--The production of books, accounts,  
21 memoranda, and other records under subsection (a) shall be subject to such terms and conditions

1 as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of  
2 any trade secrets or sensitive commercial information.

3 "(d) EFFECT ON STATE LAW.--Nothing in this section shall preempt applicable State  
4 law concerning the provision of books, records, or any other information, or in any way limit the  
5 rights of any State to obtain books, records, or any other information under any other Federal  
6 law, contract, or otherwise.

7 "(e) COURT JURISDICTION.--Any United States district court located in the State in  
8 which the State commission referred to in subsection (a) is located shall have jurisdiction to  
9 enforce compliance with this section.

10 "SEC. 5. EXEMPTION AUTHORITY

11 "(a) RULEMAKING.--Not later than 90 days after the effective date of this Act, the  
12 Commission shall promulgate a final rule to exempt from the requirements of section 3 any  
13 person that is a holding company, solely with respect to one or more --

14 "(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

15 "(2) exempt wholesale generators; or

16 "(3) foreign utility companies.

17 "(b) OTHER AUTHORITY.--If, upon application or upon its own motion, the  
18 Commission finds that the books, records, accounts, memoranda, and other records of any person  
19 are not relevant to the jurisdictional rates of a public utility or natural gas company, or if the  
20 Commission finds that any class of transactions is not relevant to the jurisdictional rates of a  
21 public utility or natural gas company, the Commission shall exempt such person or transaction

1 from the requirements of section 3.

2 "SEC. 6. AFFILIATE TRANSACTIONS.

3 "Nothing in this Act shall preclude the Commission or a State commission from  
4 exercising its jurisdiction under otherwise applicable law to determine whether a public utility  
5 company, public utility, or natural gas company may recover in rates any costs of an activity  
6 performed by an associate company, or any costs of goods or services acquired by such public  
7 utility company from an associate company.

8 "SEC. 7. APPLICABILITY.

9 "No provision of this Act shall apply to, or be deemed to include--

10 "(1) the United States;

11 "(2) a State or any political subdivision of a State;

12 "(3) any foreign governmental authority not operating in the United States;

13 "(4) any agency, authority, or instrumentality of any entity referred to in  
14 paragraph (1), (2), or (3); or

15 "(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2),  
16 or (3) acting as such in the course of official duty.

17 "SEC 8. EFFECT ON OTHER REGULATIONS.

18 "Nothing in this Act precludes the Commission or a State commission from exercising its  
19 jurisdiction under otherwise applicable law to protect utility customers.

20 "SEC. 9. ENFORCEMENT.

21 "The Commission shall have the same powers as set forth in sections 306 through 317 of

1 the Federal Power Act (16 U.S.C. 825d-825p) to enforce the provisions of this Act.

2 "SEC. 10. SAVINGS PROVISIONS.

3 "(a) IN GENERAL.--Nothing in this Act prohibits a person from engaging in or  
4 continuing to engage in activities or transactions in which it is legally engaged or authorized to  
5 engage on the effective date of this Act.

6 "(b) EFFECT ON OTHER COMMISSION AUTHORITY.--Nothing in this Act limits  
7 the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including  
8 section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of  
9 that Act).

10 "SEC. 11. IMPLEMENTATION.

11 "Not later than 18 months after the date of enactment of the Comprehensive Electricity  
12 Competition Act, the Commission shall--

13 "(1) promulgate such regulations as may be necessary or appropriate to implement  
14 this Act (other than section 4); and

15 "(2) submit to the Congress detailed recommendations on technical and  
16 conforming amendments to Federal law necessary to carry out this Act and the  
17 amendments made by this Act.

18 "SEC. 12. TRANSFER OF RESOURCES.

19 "All books and records that relate primarily to the functions transferred to the  
20 Commission under this Act shall be transferred from the Securities and Exchange Commission to  
21 the Commission.

1 "SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

2 "There are authorized to be appropriate such funds as may be necessary to carry out this  
3 Act.

4 "SEC. 14. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.

5 "Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed."

6 SEC. 502. ELECTRIC COMPANY MERGERS.

7 Section 203(a) of the FPA is amended by--

8 (1) striking "public utility" each time it appears and inserting in its place "person  
9 or electric utility company";

10 (2) inserting after the first sentence the following: "Except as the Commission  
11 otherwise provides, a holding company in a holding company system that includes an  
12 electric utility company shall not, directly or indirectly, purchase, acquire, or take any  
13 security of an electric utility company or of a holding company in a holding company  
14 system that includes an electric utility company, without first securing an order of the  
15 Commission authorizing it to do so.";

16 (3) striking "hearing" in the last sentence and inserting "oral or written  
17 presentation of views";

18 (4) adding after "public interest" the following: "including consideration of the  
19 effects on competition in wholesale and retail electricity markets,"; and

20 (5) adding at the end the following: "For purposes of this subsection, the terms  
21 'electric utility company', 'holding company', and 'holding company system' have the

1 meaning given them in the Public Utility Holding Company Act of 1999.

2 Notwithstanding section 201(b)(1), generation facilities are subject to the jurisdiction of  
3 the Commission for purposes of this section, except as the Commission otherwise may  
4 provide, provided that an entity that has existing loans made or guaranteed under the  
5 Rural Electrification Act of 1936 (5 U.S.C. 901 et seq.) is not jurisdictional for purposes  
6 of this section."

7 SEC. 503. REMEDIAL MEASURES FOR MARKET POWER.

8 The FPA is amended by adding the following new section after section 216 as added by  
9 section 303 of this Act:

10 "REMEDIAL MEASURES FOR MARKET POWER"

11 "SEC. 217. (a) Definitions.--As used in this section--

12 "(1) 'market power' means the ability of a public utility or electric utility  
13 profitably to maintain prices above competitive levels for a significant period of time, and

14 "(2) 'notice of retail competition' has the meaning provided under section 3(22) of  
15 the Public Utility Regulatory Policies Act of 1978.

16 "(b) Commission Jurisdictional Sales.--(1) If the Commission determines that there are  
17 markets in which a public utility that owns or controls generation facilities has market power in  
18 sales of electric energy for resale in interstate commerce, the Commission shall order that utility  
19 to submit a plan for taking necessary actions to remedy its market power, which may include, but  
20 is not limited to, conditions respecting operation or dispatch of generation, independent operation  
21 of transmission facilities, or divestiture of ownership of one or more generation facilities.

1           "(2) In consultation with the Attorney General and the Federal Trade Commission, the  
2 Commission shall review the plan to determine if its implementation would adequately mitigate  
3 the adverse competitive effects of market power. The Commission may approve the plan with or  
4 without modification. The plan takes effect upon approval by the Commission. Notwithstanding  
5 any State law, regulation, or order to the contrary and notwithstanding any other provision of this  
6 Act or any other law, the Commission has jurisdiction to order divestiture or other transfer of  
7 control of generation assets pursuant to the plan.

8           “(c) State Jurisdictional Sales.--(1) If a State commission that has filed a notice of retail  
9 competition has reason to believe that an electric utility doing business in the State has market  
10 power, the State commission may apply for an order under this section.

11           "(2) If, after receipt of such an application and after notice and opportunity for a hearing,  
12 the Commission determines that the electric utility has market power in the sales of electric  
13 energy sold at retail in the State, this market power would adversely affect competition in the  
14 State, and the State commission lacks authority to effectively remedy such market power, the  
15 Commission may order the electric utility to submit a plan for taking necessary actions to remedy  
16 the electric utility’s market power. These actions may include conditions respecting operation or  
17 dispatch of generation, competitive procurement of all generation capacity or energy,  
18 independent operation of transmission facilities, or divestiture of ownership of one or more  
19 generation facilities of the electric utility.

20           "(3) After consultation with the Attorney General and the Federal Trade Commission, the  
21 Commission may approve the plan with or without modification. The plan shall take effect upon

1 approval by the Commission.

2 "(4) Notwithstanding any State law, regulation, or order to the contrary and  
3 notwithstanding any other provision of this Act or any other law, the Commission has  
4 jurisdiction to order divestiture or other transfer of control of generation assets pursuant to the  
5 plan.".

## 6 TITLE VI. ELECTRIC RELIABILITY

### 7 SEC. 601. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT.

8 (a) Electric Reliability Organization and Oversight.--The Federal Power Act is amended  
9 by adding the following new section after section 217:

#### 10 "ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT

11 "SEC. 218. (a) Purpose.-- The purpose of this section is to provide for the establishment  
12 and enforcement of mandatory reliability standards in order to ensure the reliable operation of the  
13 bulk-power system.

14 (b) Definitions.--As used in this section:

15 "(1) The term 'Affiliated Regional Reliability Entity' means an entity delegated  
16 authority under the provisions of subsection (i).

17 "(2) The term 'Bulk-Power System' means all facilities and control systems  
18 necessary for operating an interconnected transmission grid (or any portion thereof),  
19 including high-voltage transmission lines, substations, control centers, communications,  
20 data, and operations planning facilities, and the output of generating units necessary to  
21 maintain transmission system reliability.



1           “(3) The term ‘Electric Reliability Organization’ or ‘Organization’ means the  
2 organization approved by the Commission under subsection (e)(4).

3           “(4) The term ‘Entity Rule’ means a rule adopted by an Affiliated Regional  
4 Reliability Entity for a specific region and designed to implement or enforce one or more  
5 Organization Standards. An Entity Rule shall be subject to approval by the Organization,  
6 and once approved, shall be treated as an Organization Standard.

7           “(5) The term ‘Industry Sector’ means a group of Users of the Bulk Power System  
8 with substantially similar commercial interests, as determined by the board of the Electric  
9 Reliability Organization.

10           “(6) The term ‘Interconnection’ means a geographic area in which the operation  
11 of Bulk-Power System components is synchronized such that the failure of one or more  
12 of such components may adversely effect the ability of the operators of other components  
13 within the Interconnection to maintain safe and reliable operation of the facilities within  
14 their control.

15           “(7) The term ‘Organization Standard’ means a policy or standard duly adopted  
16 by the Electric Reliability Organization to provide for the reliable operation of a Bulk-  
17 Power System.

18           “(8) The term ‘Public Interest Group’ means any non-profit private or public  
19 organization that has an interest in the activities of the Electric Reliability Organization,  
20 including, but not limited to, ratepayer advocates, environmental groups, and State and  
21 local government organizations that regulate market participants and promulgate

1 government policy.

2 “(9) The term ‘Variance’ means an exception or variance from the requirements of  
3 an Organization Standard (including a proposal for an Organization standard where there  
4 is no Organization Standard) that is adopted by an Affiliated Regional Reliability Entity  
5 and applicable to all or a part of the region for which the Affiliated Regional Reliability  
6 Entity is responsible. A Variance shall be subject to approval by the Organization, and  
7 once approved, shall be treated as an Organization Standard.

8 “(10) The term ‘System Operator’ means any entity that operates or is responsible  
9 for the operation of a Bulk-Power System, including but not limited to a control area  
10 operator, an independent system operator, a transmission company, a transmission system  
11 operator, or a regional security coordinator.

12 “(11) The term ‘User of the Bulk-Power System’ means any entity that sells,  
13 purchases, or transmits electric power over a Bulk-Power System, or that owns, operates  
14 or maintains facilities or control systems that are part of a Bulk-Power System, or that is a  
15 System Operator.

16 “(c) Commission Authority.—Notwithstanding any other provision of the Federal Power  
17 Act, within the United States the Commission has jurisdiction over the Electric Reliability  
18 Organization, all Affiliated Regional Reliability Entities, all System Operators, and all Users of  
19 the Bulk-Power System, for purposes of approving and enforcing compliance with the  
20 requirements of this section.

21 “(d) Existing Reliability Standards.-- Following enactment of this section, and prior to the

1 approval of an Organization under subsection (e), any person, including the North American  
2 Electric Reliability Council and its member Regional Reliability Councils, may file with the  
3 Commission any reliability standard, guidance, or practice, or any amendment thereto, that the  
4 person would propose to be made mandatory and enforceable. The Commission, after allowing  
5 interested persons an opportunity to submit comments, may approve the proposed mandatory  
6 standard, guidance, or practice, or any amendment thereto, if it finds that the standard, guidance,  
7 or practice, or amendment is just, reasonable, not unduly discriminatory or preferential, and in  
8 the public interest. Filed standards, guidance, or practices, including any amendments thereto,  
9 shall be mandatory and applicable according to their terms following approval by the  
10 Commission and shall remain in effect until—

11 “(1) withdrawn, disapproved or superseded by an Organization Standard, issued  
12 or approved by the Electric Reliability Organization and made effective by the  
13 Commission under section (f); or

14 “(2) disapproved or suspended by the Commission if, upon complaint or upon its  
15 own motion and after notice and an opportunity for comment, the Commission finds the  
16 standard, guidance, or practice unjust, unreasonable, unduly discriminatory or  
17 preferential, or not in the public interest.

18 Standards, guidance, or practices in effect pursuant to the provisions of this subsection shall be  
19 enforceable by the Commission under Part III of this Act.

20 “(e) Organization Approval.--(1) Not later than 90 days after the date of enactment of this  
21 section, the Commission shall issue proposed rules specifying procedures and requirements for

1 an entity to apply for approval as the Electric Reliability Organization. The Commission shall  
2 provide notice and opportunity for comment on the proposed rules. The Commission shall issue  
3 a final rule under this subsection within 180 days after the date of enactment of this section.

4 “(2) Following the issuance of a final Commission rule under paragraph (1), an entity  
5 may submit an application to the Commission for approval as the Electric Reliability  
6 Organization. The applicant shall specify in its application its governance and procedures, as  
7 well as its funding mechanism and initial funding requirements.

8 “(3) The Commission shall provide public notice of the application and afford interested  
9 parties an opportunity to comment.

10 “(4) The Commission shall approve the application if the Commission determines that the  
11 applicant –

12 “(A) has the ability to develop, implement, and enforce standards that provide for  
13 an adequate level of reliability of the Bulk-Power System;

14 “(B) permits voluntary membership to any User of the Bulk-Power System or  
15 Public Interest Group;

16 “(C) assures fair representation of its members in the selection of its directors and  
17 fair management of its affairs, taking into account the need for efficiency and  
18 effectiveness in decisionmaking and operations and the requirements for technical  
19 competency in the development of Organization Standards and the exercise of oversight  
20 of Bulk-Power System reliability;

21 “(D) assures that no two Industry Sectors have the ability to control, and no one

1 Industry Sector has the ability to veto, the Electric Reliability Organization’s discharge of  
2 its responsibilities (including actions by committees recommending standards to the board or other  
3 board actions to implement and enforce standards);

4 “(E) provides for governance by a board of no more than eleven members, one of  
5 whom shall be appointed by the Secretary of Energy;

6 “(F) provides a funding mechanism and requirements that are just, reasonable, and  
7 not unduly discriminatory or preferential and are in the public interest, and which satisfy  
8 the requirements of subsection (n);

9 “(G) establishes procedures for development of Organization Standards that  
10 provide reasonable notice and opportunity for public comment, taking into account the  
11 need for efficiency and effectiveness in decisionmaking and operations and the  
12 requirements for technical competency in the development of Organization Standards,  
13 and which standards development process has the following attributes: (i) openness, (ii)  
14 balance of interests, and (iii) due process, except that the procedures may include  
15 alternative procedures for emergencies;

16 “(H) establishes fair and impartial procedures for implementation and  
17 enforcement of Organization Standards, either directly or through delegation to an  
18 Affiliated Regional Reliability Entity, including the imposition of penalties, limitations  
19 on activities, functions, or operations, or other appropriate sanctions;

20 “(I) establishes procedures for notice and opportunity for public observation of all  
21 meetings, except that the procedures for public observation may include alternative

1 procedures for emergencies or for the discussion of information the directors determine  
2 should take place in closed session, such as litigation, personnel actions, or commercially  
3 sensitive information;

4 “(J) provides for the consideration of recommendations of States and State  
5 commissions, and

6 “(K) addresses other matters that the Commission may deem necessary or  
7 appropriate to ensure that the procedures, governance, and funding of the Electric  
8 Reliability Organization are just, reasonable, not unduly discriminatory or preferential,  
9 and are in the public interest.

10 “(5) The Commission shall approve only one Electric Reliability Organization. If the  
11 Commission receives two or more timely applications that satisfy the requirements of this  
12 subsection, the Commission shall approve only the application it concludes will best implement  
13 the provisions of this section.

14 “(f) Establishment of and Modifications to Organization Standards.-- (1) The Electric  
15 Reliability Organization shall file with the Commission any new or modified Organization  
16 Standards, including any Variances or Entity Rules, and the Commission shall follow the  
17 procedures under paragraph (2) for review of that filing. Submissions shall include:

18 “(A) a concise statement of the purpose of the proposal, and

19 “(B) a record of any proceedings conducted with respect to the proposal.

20 “(2) The Commission shall provide notice of the filing of the proposal and afford  
21 interested persons a reasonable time, but not more than 30 days, to submit comments. The

Commission, after taking into consideration any submitted comments, shall approve or disapprove the proposal not later than 60 days after the deadline for the submission of comments, except that:

“(A) the Commission may extend the 60 day period for an additional 90 days for good cause, and

“(B) if the Commission does not act to approve or disapprove a proposal within the periods set forth in this paragraph, the proposal shall go into effect, without prejudice to the authority of the Commission thereafter to suspend or modify the proposal in accordance with the standards and requirements of this section.

Proposals approved by the Commission take effect according to their terms but not earlier than 30 days after the effective date of the Commission’s order, except as provided in paragraph (3).

“(3)(A) In the exercise of its review responsibilities under this subsection, the Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a new or modified Organization Standard, but shall not defer to the Organization with respect to the effect of the standard on competition. The Commission shall approve a proposed new or modified Organization Standard if it determines the proposal to be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

“(B) The Commission, either upon complaint or upon its own motion, shall suspend an existing Organization Standard, if it determines the standard to be unjust, unreasonable, unduly discriminatory or preferential, or not in the public interest.

1           “(C) An existing or proposed Organization standard which is disapproved or suspended in  
2 whole or in part by the Commission shall be remanded to the Electric Reliability Organization  
3 for further consideration.

4           “(D) The Commission, on its own motion or upon complaint, may direct the Electric  
5 Reliability Organization to develop an Organization Standard, including modification to an  
6 existing Organization Standard, addressing a specific matter by a date certain if the Commission  
7 considers a new or modified Organization Standard necessary or appropriate to further the  
8 purposes of this section. The Electric Reliability Organization shall file any new or modified  
9 Organization Standard in accordance with this subsection.

10           “(E) An Affiliated Regional Reliability Entity may propose a Variance or Entity Rule to  
11 the Electric Reliability Organization under subsection (i)(3). The Affiliated Regional Reliability  
12 Entity may request that the Electric Reliability Organization expedite consideration of the  
13 proposal, and may file a notice of this request with the Commission, if expedited consideration is  
14 necessary to provide for Bulk-Power System reliability. If the Electric Reliability Organization  
15 fails to adopt the Variance or Entity Rule, either in whole or in part, the Affiliated Regional  
16 Reliability Entity may request that the Commission review such action. If the Commission  
17 determines, after its review of such a request, that the action of the Electric Reliability  
18 Organization did not conform to the applicable standards and procedures approved by the  
19 Commission, or if the Commission determines that the Variance or Entity Rule is just,  
20 reasonable, not unduly discriminatory or preferential, and in the public interest, and that the  
21 Electric Reliability Organization has unreasonably rejected the proposed Variance or Entity Rule,



1 the Commission may remand the proposed Variance or Entity Rule for further consideration by  
2 the Electric Reliability Organization or may direct the Electric Reliability Organization or the  
3 Affiliated Regional Reliability Entity to develop a Variance or Entity Rule consistent with that  
4 requested by the Affiliated Regional Reliability Entity. Such a Variance or Entity Rule proposed  
5 by an Affiliated Regional Reliability Entity shall be submitted to the Electric Reliability  
6 Organization for review and filing with the Commission in accordance with the procedures  
7 specified in this subsection.

8 “(F) Notwithstanding any other provision of this subsection, a proposed Organization  
9 Standard or amendment shall take effect according to its terms if the Electric Reliability  
10 Organization determines that an emergency exists requiring that the proposed Organization  
11 Standard or amendment take effect without notice or comment. The Electric Reliability  
12 Organization shall notify the Commission immediately following this determination and shall  
13 file the emergency Organization Standard or amendment with the Commission not later than five  
14 days following the determination and shall include in the filing an explanation of the need for the  
15 emergency standard. Subsequently, the Commission shall provide notice of the emergency  
16 Organization Standard or amendment for comment, and shall follow the procedures set out in  
17 paragraphs (2) and (3) for review of a new or modified Organization Standard. An emergency  
18 Organization Standard that has gone into effect shall remain in effect unless and until suspended  
19 or disapproved by the Commission. If the Commission determines at any time that the  
20 emergency Organization Standard or amendment is not necessary, the Commission may suspend  
21 the emergency Organization Standard or amendment.

1           “(4) All Users of the Bulk- Power System shall comply with any Organization Standard  
2 that takes effect under this section.

3           “(g) Coordination with Canada and Mexico.--The Electric Reliability Organization shall  
4 take all appropriate steps to gain recognition in Canada and Mexico. Subject to the President’s  
5 authority with respect to foreign policy, the United States shall use its best efforts to enter into  
6 international agreements with the appropriate governments of Canada and Mexico to provide for  
7 effective compliance with Organization Standards and to provide for the effectiveness of the  
8 Electric Reliability Organization in carrying out its mission and responsibilities. All actions  
9 taken by the Electric Reliability Organization, any Affiliated Regional Reliability Entity, and the  
10 Commission shall be consistent with the provisions of such international agreements.

11           “(h) Changes in Procedures, Governance, or Funding.--(1) The Electric Reliability  
12 Organization shall file with the Commission any proposed change in its procedures, governance,  
13 or funding, or any changes in the Affiliated Regional Reliability Entity’s procedures, governance  
14 or funding relating to delegated functions, and shall include with the filing an explanation of the  
15 basis and purpose for the change.

16           “(2) A proposed procedural change may take effect 90 days after filing with the  
17 Commission if the change constitutes a statement of policy, practice, or interpretation with  
18 respect to the meaning or enforcement of an existing procedure. Any other proposed procedural  
19 change takes effect only upon a finding by the Commission, after notice and opportunity for  
20 comments, that the change is just, reasonable, not unduly discriminatory or preferential, is in the  
21 public interest, and satisfies the requirements of subsection (e)(4).

1           “(3) A change in governance or funding does not take effect unless the Commission finds  
2           that the change is just, reasonable, not unduly discriminatory or preferential, and is in the public  
3           interest, and satisfies the requirements of subsection (e)(4).

4           “(4)(A) The Commission, either upon complaint or upon its own motion, may suspend a  
5           procedure or governance or funding provision if it determines the procedure or provision does  
6           not meet the requirements of subsection (e)(4) or is unjust, unreasonable, unduly discriminatory  
7           or preferential, or otherwise not in the public interest.

8           “(B) The Commission, upon complaint or upon its own motion, may require the Electric  
9           Reliability Organization to amend the procedures, governance or funding if the Commission  
10          determines that the amendment is necessary to meet the requirements of this section. The  
11          Electric Reliability Organization shall file the amendment in accordance with paragraph (1) of  
12          this subsection.

13          “(i) Delegations of Authority. -- (1) The Electric Reliability Organization shall, upon  
14          request by an entity, enter into an agreement with the entity for the delegation of authority to  
15          implement and enforce compliance with Organization Standards approved by the Commission in  
16          a specified geographic area if the Organization finds that the entity requesting the delegation  
17          satisfies the requirements of subsection (e)(4)(A), (B), (C), (D), (F), and (K), and if the  
18          delegation promotes the effective and efficient implementation and administration of Bulk-Power  
19          System reliability. The Electric Reliability Organization may enter into an agreement to delegate  
20          to the entity any other authority, except that the Electric Reliability Organization shall reserve the  
21          right to set and approve standards for Bulk-Power System reliability.

1           “(2) The Electric Reliability Organization shall file with the Commission any agreement  
2 entered into under this subsection and any information the Commission requires with respect to  
3 the Affiliated Regional Reliability Entity to which authority is to be delegated. The Commission  
4 shall approve the agreement, following public notice and an opportunity for comment, if it finds  
5 that the agreement meets the requirements of paragraph (1), and is just, reasonable, not unduly  
6 discriminatory or preferential, and is in the public interest. A proposed delegation agreement  
7 with an Affiliated Regional Reliability Entity organized on an Interconnection-wide basis shall  
8 be rebuttably presumed by the Commission to promote the effective and efficient  
9 implementation and administration of Bulk-Power System reliability. No delegation by the  
10 Electric Reliability Organization shall be valid unless approved by the Commission.

11           “(3)(A) A delegation agreement entered into under this subsection shall specify the  
12 procedures for an Affiliated Regional Reliability Entity to propose Entity Rules or Variances for  
13 review by the Electric Reliability Organization.

14           “(B) With respect to any such proposal that would apply on an Interconnection-wide  
15 basis, the Electric Reliability Organization shall presume the proposal valid if made by an  
16 Interconnection-wide Affiliated Regional Reliability Entity unless the Electric Reliability  
17 Organization makes a written finding that the proposal--

18                   “(i) was not developed in a fair and open process that provided an opportunity for  
19 all interested parties to participate;

20                   “(ii) has a significant adverse impact on reliability or commerce in other  
21 Interconnections;

1 “(iii) fails to provide a level of reliability of the Bulk-Power System within the  
2 Interconnection such that it would constitute a serious and substantial threat to public  
3 health, safety, welfare, or national security; or

4 “(iv) creates a serious and substantial burden on competitive markets within the  
5 Interconnection that is not necessary for reliability.

6 “(C) With respect to a proposal that would apply only to part of an Interconnection, the  
7 Electric Reliability Organization shall find the proposal valid if the Affiliated Regional  
8 Reliability Entity or Entities making the proposal demonstrate that it--

9 “(i) was developed in a fair and open process that provided an opportunity for all  
10 interested parties to participate;

11 “(ii) would not have an adverse impact on commerce that is not necessary for  
12 reliability;

13 “(iii) provides a level of Bulk-Power System reliability adequate to protect public  
14 health, safety, welfare, and national security, and would not have a significant adverse  
15 impact on reliability; and

16 “(iv) in the case of a Variance, is based on legitimate differences between regions  
17 or between subregions within the Affiliated Regional Reliability Entity’s geographic area.

18 “(D) The Electric Reliability Organization shall approve or disapprove the proposal  
19 within 120 days, or the proposal is deemed approved. Following approval of a proposal under  
20 this paragraph, the Electric Reliability Organization shall seek Commission approval pursuant to  
21 subsection (f). Affiliated Regional Reliability Entities may not make requests for approval

1 directly to the Commission except pursuant to subsection (f)(3)(E).

2 “(4) If an Affiliated Regional Reliability Entity requests, consistent with paragraph (1) of  
3 this subsection, that the Electric Reliability Organization delegate authority to it, but is unable  
4 within 180 days to reach agreement with the Electric Reliability Organization with respect to the  
5 requested delegation, the entity may seek relief from the Commission. If, following notice and  
6 opportunity for comment, the Commission determines that the delegation to the entity would  
7 meet the requirements of paragraph (1); that the delegation would be just, reasonable, not unduly  
8 discriminatory or preferential, and in the public interest; and that the Electric Reliability  
9 Organization has unreasonably withheld the delegation, the Commission may, by order, direct  
10 the Electric Reliability Organization to make the delegation.

11 “(5) (A) The Commission may, upon its own motion or upon complaint, and with notice  
12 to the appropriate Affiliated Regional Reliability Entity or Entities, direct the Electric Reliability  
13 Organization to propose a modification to an agreement entered into under this subsection if the  
14 Commission determines that:

15 “(i) the Affiliated Regional Reliability Entity no longer has the capacity to carry  
16 out effectively or efficiently its implementation or enforcement responsibilities under that  
17 agreement, has failed to meet its obligations under that agreement, or has violated any  
18 provision of this section,

19 “(ii) the rules, practices, or procedures of the Affiliated Regional Reliability  
20 Entity no longer provide for fair and impartial discharge of its implementation or  
21 enforcement responsibilities under the agreement,

1                   “(iii) the geographic boundary of a transmission entity approved by the  
2                   Commission is not wholly within the boundary of an Affiliated Regional Reliability  
3                   Entity and such difference is inconsistent with the effective and efficient implementation  
4                   and administration of Bulk-Power System reliability, or

5                   “(iv) the agreement is inconsistent with another delegation agreement as a result  
6                   of actions taken under paragraph (4) of this subsection.

7                   “(B) Following an order of the Commission issued under paragraph (5)(A) of this  
8                   subsection, the Commission may suspend the affected agreement if the Electric Reliability  
9                   Organization or the Affiliated Regional Reliability Entity does not propose an appropriate and  
10                  timely modification. If the agreement is suspended, the Electric Reliability Organization shall  
11                  assume the previously delegated responsibilities. The Commission shall allow the Electric  
12                  Reliability Organization and the Affiliated Regional Reliability Entity an opportunity to appeal  
13                  the suspension.

14                  “(j) Organization Membership.--Every System Operator shall be a member of the Electric  
15                  Reliability Organization and shall be a member of any Affiliated Regional Reliability Entity  
16                  operating under an agreement effective pursuant to subsection (i) applicable to the region in  
17                  which the System Operator operates or is responsible for the operation of a Bulk-Power System  
18                  facility.

19                  “(k) Federal Power Systems and Nuclear Regulatory Commission. – Any actions taken  
20                  under this section by the Commission, the Electric Reliability Organization, and any Affiliated  
21                  Regional Reliability Entity shall be consistent with any statutory or treaty obligations of a

1 Federal Power Marketing Administration, the Tennessee Valley Authority, the Bureau of  
2 Reclamation and the Corps of Engineers and any Nuclear Regulatory Commission requirements.

3 “(l) Injunctions and Disciplinary Action.--(1) Consistent with the range of actions  
4 approved by the Commission under subsection (e)(4)(H), the Electric Reliability Organization  
5 may impose a penalty; may limit activities, functions, or operations; or may take other  
6 disciplinary action the Electric Reliability Organization finds appropriate against a User of the  
7 Bulk-Power System if the Electric Reliability Organization, after notice and an opportunity for  
8 interested parties to be heard, issues a finding in writing that the User of the Bulk-Power System  
9 has violated an Organization Standard approved by the Commission. The Electric Reliability  
10 Organization shall immediately notify the Commission of any disciplinary action imposed with  
11 respect to an act or failure to act of a User of the Bulk-Power System that affected or threatened  
12 to affect Bulk-Power System facilities located in the United States, and the sanctioned party shall  
13 have the right to seek modification or rescission by the Commission of such disciplinary action.  
14 If the Organization finds it necessary to prevent a serious threat to reliability, the Organization  
15 may seek injunctive relief in a Federal Court in the district in which the affected facilities are  
16 located.

17 “(2) A disciplinary action taken under paragraph (1) may take effect not earlier than the  
18 30th day after the Electric Reliability Organization files with the Commission its written finding  
19 and record of proceedings before the Electric Reliability Organization and the Commission posts  
20 the Organization’s written finding, unless the Commission, on its own motion or upon  
21 application by the User of the Bulk-Power System which is the subject of the action, suspends



1 the action. The action shall remain in effect or remain suspended unless and until the  
2 Commission, after notice and opportunity for hearing, affirms, sets aside, modifies, or reinstates  
3 the action, but the Commission shall conduct such a hearing under procedures established to  
4 ensure expedited consideration of the action taken.

5 “(3) The Commission, on its own motion, may order compliance with an Organization  
6 Standard and may impose a penalty; may limit activities, functions, or operations; or may take  
7 such other disciplinary action as the Commission finds appropriate, against a User of the Bulk-  
8 Power System with respect to actions affecting or threatening to affect Bulk-Power System  
9 facilities located in the United States if the Commission finds, after notice and opportunity for a  
10 hearing, that the User of the Bulk-Power System has violated or threatens to violate an  
11 Organization Standard.

12 “(4) The Commission may take such action as is necessary against the Electric Reliability  
13 Organization or an Affiliated Regional Reliability Entity to assure compliance with an  
14 Organization Standard, or any Commission order affecting the Electric Reliability Organization  
15 or an Affiliated Regional Reliability Entity.

16 “(m) Reliability Reports.--The Electric Reliability Organization shall conduct periodic  
17 assessments of the reliability and adequacy of the interconnected Bulk-Power System in North  
18 America and shall report annually to the Secretary of Energy and the Commission its findings  
19 and recommendations for monitoring or improving system reliability and adequacy.

20 “(n) Assessment and Recovery of Certain Costs.-- The reasonable costs of the Electric  
21 Reliability Organization, and the reasonable costs of each Affiliated Regional Reliability Entity

1 that are related to implementation and enforcement of Organization Standards or other  
2 requirements contained in a delegation agreement approved under subsection (i), shall be  
3 assessed by the Electric Reliability Organization and each Affiliated Regional Reliability Entity,  
4 respectively, taking into account the relationship of costs to each region and based on an  
5 allocation that reflects an equitable sharing of the costs among all end-users. The Commission  
6 shall provide by rule for the review of such costs and allocations, pursuant to the standards in this  
7 subsection and subsection (e)(4)(F).

8 “(o) Rule of Reason Standard. -- In any action under the antitrust laws, the conduct of the  
9 Electric Reliability Organization, of an Affiliated Regional Reliability Entity operating under an  
10 agreement in effect under subsection (i), or of a member of the Electric Reliability Organization  
11 or an Affiliated Regional Reliability Entity, to the extent such conduct is undertaken to develop  
12 or implement an Organization Standard which is approved by the Commission under subsection  
13 (f), shall not be deemed illegal per se. Such conduct shall be judged on the basis of its  
14 reasonableness, taking into account all relevant factors affecting competition. For purposes of  
15 this section, “antitrust laws” has the meaning given it in subsection (a) of the first section of the  
16 Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to  
17 the extent that such section 5 applies to unfair methods of competition”.

18 (b) Conforming Amendments.--(1) Section 316 of the FPA is amended by striking “or  
19 214” each place it appears and inserting “214, or 218”.

20 (2) Section 316A of the FPA is amended by striking “section 211, 212, 213, or 214” each  
21 time it appears and inserting “Part II of this Act”.

1 SEC. 602. ELECTRICITY OUTAGE INVESTIGATION.

2 Title II of the Department of Energy Organization Act is amended by adding the  
3 following new section after section 213 as added by section 408:

4 SEC. 214. ELECTRICITY OUTAGE INVESTIGATION BOARD.

5 “(a) Establishment; membership; terms. The Secretary shall establish an Electricity  
6 Outage Investigation Board. The Board shall consist of five members, appointed by the  
7 Secretary. Each member shall serve a term of three years.

8 “(b) Duties. The Board shall—

9 “(1) investigate a major bulk-power system failure in the United States to  
10 determine its causes,

11 “(2) report to the Secretary the results of the investigation, and

12 “(3) recommend to the Secretary actions to minimize the possibility of a future  
13 bulk-power system failure.

14 “(c) Federal Advisory Committee Act. The Board shall not be subject to the Federal  
15 Advisory Committee Act (5 U.S.C. Appx.).”.

16 SEC. 603. ADDITIONAL TRANSMISSION CAPACITY.

17 Section 209 of PURPA is amended by adding a new subsection after subsection (c):

18 “(d) Consideration of Additional Transmission Capacity.--The Secretary may call and  
19 chair a meeting of representatives of States in a region in order to discuss provision of additional  
20 transmission capacity and related concerns in such region.”.

21 TITLE VII. ENVIRONMENTAL PROTECTION

1 SEC. 701. NITROGEN OXIDES CAP AND TRADE PROGRAM.

2 (a) Purpose.--The purpose of this section is to facilitate the implementation of a regional  
3 strategy for reducing ambient concentrations of ozone through regional reductions in emissions  
4 of NOx.

5 (b) Definitions.--For purposes of this section--

6 (1) the term "Administrator" means the Administrator of the Environmental  
7 Protection Agency,

8 (2) the term "NOx" means oxides of nitrogen,

9 (3) the term "NOx allowance" means an authorization to emit a specified amount  
10 of NOx into the atmosphere, and

11 (4) the term "NOx allowance cap and trade program" means a program under  
12 which, in accordance with regulations issued by the Administrator, the Administrator  
13 establishes the maximum number of NOx allowances that may be allocated for specified  
14 control periods, allocates or authorizes a State to allocate NOx allowances, allows the  
15 transfer of NOx allowances for use in States subject to such a program, requires  
16 monitoring and reporting of NOx emissions that meet the requirements of section 412 of  
17 the Clean Air Act, and prohibits, and requires penalties and offsets for, any emissions of  
18 NOx in excess of the number of NOx allowances held.

19 (c) Program Implementation.--(1) If the Administrator determines under section  
20 110(a)(2)(D) of the Clean Air Act that any source or other type of emissions activity in a State  
21 emits NOx in amounts that will contribute significantly to nonattainment in, or interfere with

1 maintenance by, any other State with respect to any national ambient air quality standard for  
2 ozone, the Administrator shall establish by regulation, within 12 months of the determination for  
3 primary standards and as expeditiously as practicable for secondary standards, and shall  
4 administer a NOx allowance cap and trade program in all States in which such a source or other  
5 type of emissions activity is located.

6 (2) Any NOx allowance cap and trade program shall contribute to providing for  
7 emissions reductions that mitigate adequately the contribution or interference and shall be taken  
8 into account by the Administrator in determining compliance with section 110(a)(2)(D) of the  
9 Clean Air Act.

10 (3) For purposes of sections 113, 114, 304, and 307 of the Clean Air Act, regulations  
11 promulgated under this section shall be treated as regulations promulgated under title IV of the  
12 Clean Air Act (entitled Acid Deposition Control). A requirement of regulations promulgated  
13 under this section is considered an "emission standard" or "emission limitation" within the  
14 meaning of section 302 of the Clean Air Act and an "emission standard or limitation under this  
15 Act" within the meaning of section 304 of the Clean Air Act.

## 16 TITLE VIII. FEDERAL POWER SYSTEMS

### 17 Subtitle A—Tennessee Valley Authority

#### 18 SEC. 801. DEFINITION.

19 Section 3 of the Federal Power Act is amended by adding after paragraph (25) the  
20 following new paragraph:

21 “(26) ‘TVA’ means the Tennessee Valley Authority, an agency and

1                   instrumentality of the United States created by the Tennessee Valley Authority Act of  
2                   1933;”.

3       SEC. 802. APPLICATION OF FEDERAL POWER ACT.

4                   Part II of the Federal Power Act is amended by adding the following new section after  
5       section 201:

6                               “APPLICATION TO FEDERAL POWER SYSTEMS

7                   “SEC. 201A. (a) After January 1, 2003, sections 202(h) and (i), 203 (with respect to  
8       dispositions of transmission facilities), 205, 206, 208, and 210 through 213 of this Part and  
9       sections 301 through 304, 306, 307 (except the last sentence of paragraph (c)), 308, 309, 313, and  
10      317 of Part III apply to TVA’s transmission facilities and transmission of electric energy and the  
11      provision of necessary associated services over the TVA Transmission System, except that any  
12      determination made by the Commission under those provisions as to whether an action or matter  
13      is just, reasonable, or not unduly discriminatory or preferential shall be subject to any other laws  
14      applicable to TVA, including the requirement that TVA recover its costs.”.

15      SEC. 803. ANTITRUST COVERAGE.

16                  The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) is amended by  
17      adding the following after section 21:

18                  “SEC. 21a. ANTITRUST LAWS.

19                  “(a) Subject to subsection (b), effective January 1, 2003, the Tennessee Valley Authority  
20      is subject to the antitrust laws of the United States with respect to the operation of its electric  
21      power system. For purposes of this section, ‘antitrust laws’ has the meaning given it in

subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that it includes the Act of June 19, 1936 (15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that section 5 applies to unfair methods of competition.

“(b) No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from the Tennessee Valley Authority.”.

#### SEC. 804. TVA POWER SALES.

The Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) is amended by adding the following after section 15d:

#### “SEC.15e. SALE OF ELECTRIC POWER AT WHOLESALE AND RETAIL.

“(a) For the purposes of this section:

“(1) ‘distributor’ means an electric power system that–

“(A) is owned by a cooperative organization or by a municipality or other public body (or any successor in interest), and

“(B) on the date of enactment of this section, purchased electric power at wholesale from the Tennessee Valley Authority under an all-requirements power contract; and

“(2) ‘distributor service area’ means the geographic area within which a distributor is authorized on the date of enactment of this section to provide electric power at retail to the ultimate consumer.

1           “(b)(1) Effective January 1, 2003, the Tennessee Valley Authority may sell electric  
2 power at wholesale to any person.

3           “(2) Beginning January 1, 2003, the Tennessee Valley Authority shall not sell power at  
4 retail, except it may sell power to a retail customer who consumes that power within a distributor  
5 service area, if—

6                   “(A) the customer (or predecessor in interest) purchased electric power directly  
7 from the Tennessee Valley Authority as a retail customer on the date of enactment of this  
8 section, or

9                   “(B) the distributor’s firm power purchases from the Tennessee Valley Authority  
10 are 50 percent or less of its total retail sales, or

11                   “(C) the distributor agrees that the Tennessee Valley Authority can sell power to  
12 the customer.

13 Nothing in this paragraph shall prohibit the Tennessee Valley Authority from continuing to serve  
14 a retail customer which the Tennessee Valley Authority was serving on the date of enactment of  
15 this section that is not located within a distributor service area.

16           “(3) Notwithstanding any other provision of law, the rates, terms, and conditions of retail  
17 electric service, and rates for the use of distribution lines are not subject to regulation by the  
18 Tennessee Valley Authority.”.

19 SEC. 805. RENEGOTIATION OF LONG-TERM POWER CONTRACTS.

20           Section 15e of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) as  
21 added by section 804 of this Act is amended by adding the following after subsection (b):



1           “(c)(1) Within one year following the date of enactment of this section, the Tennessee  
2 Valley Authority and the distributors shall renegotiate their existing long-term contracts with  
3 respect to–

4                   “(A) the remaining term;

5                   “(B) the length of the termination notice;

6                   “(C) the amount of power a distributor may purchase from a supplier other than  
7 the Tennessee Valley Authority beginning January 1, 2003, and access to the Tennessee  
8 Valley Authority transmission system for that power; and

9                   “(D) stranded cost recovery.

10           “(2) If the parties are unable to reach agreement with regard to any of the issues under  
11 paragraph (1) within the one-year period set forth in paragraph (1), they shall submit the issue in  
12 dispute to the Federal Energy Regulatory Commission for final resolution.”.

13 SEC. 806. STRANDED COST RECOVERY.

14           (a) Section 206 of the Federal Power Act is amended by adding the following new  
15 subsection after subsection (e) as added by section 301(b) of this Act:

16           “(f)(1) Within one year of the date of enactment of this subsection, the Commission shall  
17 promulgate regulations with respect to TVA’s recovery of stranded costs (as defined by the  
18 Commission) imposed on TVA resulting from wholesale or retail competition. These regulations  
19 shall provide that--

20                   “(A) a customer that did not cause costs to be stranded is not obligated to pay  
21 those costs on behalf of other customers;

1           “(B) no stranded investment recovery charge shall have the effect of unfairly  
2       shifting costs among distributors or TVA retail customers;

3           “(C) for a stranded cost recovery charge TVA assesses on a retail or wholesale  
4       customer, TVA shall unbundle the charge from other retail or wholesale rates applicable  
5       to that customer and state the charge separately on the customer’s bill; and

6           “(D) TVA shall not impose a stranded cost recovery charge after September 30,  
7       2007, unless the person against whom the charge is assessed agrees otherwise.

8           “(2) After notice and opportunity for comment, TVA shall submit a stranded cost  
9       recovery plan to the Commission for review and approval.

10          “(3) The Commission shall review the recovery plan and shall approve the recovery plan  
11       if the Commission determines the plan to be just and reasonable and not unduly discriminatory or  
12       preferential and consistent with the requirements of regulations issued under paragraph (1). TVA  
13       may recover stranded costs only pursuant to a recovery plan approved by the Commission.

14          (b) Section 15e of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831-831ee) as  
15       added by section 804 of this Act is amended by adding the following after subsection (c) as  
16       added by section 805 of this Act:

17          “(d) Amounts recovered by the Tennessee Valley Authority as stranded cost recovery  
18       charges under section 206(f) of the Federal Power Act shall be used to pay down TVA’s debt to  
19       the extent determined by the TVA Board to be consistent with the proper financial management  
20       of the TVA power system, provided that TVA may not use amounts recovered to pay for  
21       additions to TVA’s generating capacity.”.

1 (c) Section 9106 of Title 31, United States Code, is amended by adding the following  
2 new subsection after subsection (b):

3 “(c) Beginning in Fiscal Year 2003, as part of the annual management report submitted  
4 by the Tennessee Valley Authority (TVA) to Congress under this section, TVA shall also  
5 specifically report:

6 “(A) the status of TVA’s long-range financial plans and the progress toward its  
7 goal of competitively priced power, and a general discussion of TVA’s prospects on  
8 meeting the objectives of the Ten Year Business Outlook issued on July 22, 1997;

9 “(B) any changes in assumptions since the previous report that may have a  
10 material effect on TVA’s long-range financial plans;

11 “(C) the source of funds used for any capacity additions;

12 “(D) the use or other disposition of amounts recovered by TVA under this section;

13 “(E) the amount by which TVA’s publicly-held debt was reduced; and

14 “(F) the projected amount by which TVA’s publicly-held debt will be reduced.”.

15 SEC. 807. CONFORMING AMENDMENTS.

16 Effective January 1, 2003 —

17 (1) section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C.  
18 831n-4(a)), which limit the sales or delivery of electric power by TVA or distributors  
19 outside a certain geographic area, is repealed;

20 (2) subsections (f) and (j) of section 212 of the Federal Power Act (16 U.S.C.  
21 824k(f) and (j)) are repealed; and

1 (3) the third proviso of section 10 of the Tennessee Valley Authority Act of 1933  
2 (16 U.S.C. 831i) and the second and third provisos of section 12 of the Tennessee Valley  
3 Authority Act of 1933 (16 U.S.C. 831k) do not apply to a wholesale sale of electric  
4 energy by the Tennessee Valley Authority.

5 Subtitle B. Bonneville Power Administration

6 SEC. 811. DEFINITIONS.

7 Section 3 of the Federal Power Act is amended by adding the following new paragraphs  
8 after paragraph (26) as added by section 801 of this Act:

9 “(27) ‘Bonneville Administrator’ means the Administrator of the Bonneville Power  
10 Administration;

11 “(28) ‘Pacific Northwest’ has the meaning given that term in section 3(14) of the Pacific  
12 Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839a(14));

13 “(29) ‘Bonneville Transmission System’ means transmission facilities owned or leased  
14 by the United States, acting through the Bonneville Administrator, and operated by the  
15 Bonneville Administrator or another entity under section 202(h) or (i) of this Act;”.

16 SEC. 812. APPLICATION OF FEDERAL POWER ACT.

17 Section 201A of the Federal Power Act as added by section 802 of this Act is amended  
18 by adding the following new subsection after subsection (a):

19 “(b) Bonneville Power Administration. -- After September 30, 2001, sections 202(h) and  
20 (i), 203 (with respect to dispositions of transmission facilities), 205, 206, 208, and 210 through  
21 213 of this Part and sections 301 through 304, 306, 307 (except the last sentence of paragraph

1 (c)), 308, 309, 313, and 317 of Part III apply to transmission facilities and transmission of  
2 electric energy and the provision of necessary associated services over the Bonneville  
3 Transmission System, provided that--

4 “(1) any determination made under those sections as to whether an action or  
5 matter is just, reasonable, not unduly discriminatory or preferential shall be subject to--

6 “(A) phasing in Commission-ordered changes in transmission rates or  
7 charges that would cause unreasonable cost shifts among users of the Bonneville  
8 Transmission System if implemented at once;

9 “(B) mitigating unreasonable adverse impacts on remote transmission  
10 customers in the Pacific Northwest that would otherwise result from Commission-  
11 ordered changes in the historic treatment of costs to acquire transmission to serve  
12 customers historically served by General Transfer Agreements entered into  
13 between the Bonneville Administrator and other transmission providers;

14 “(C) complying with requirements of other laws applicable to the  
15 Bonneville Administrator;

16 “(D) assuring the Bonneville Administrator’s transmission rates and  
17 charges are established sufficient to--

18 “(i) recover existing and future Federal investment in the  
19 Bonneville Transmission System over a reasonable number of years after  
20 first meeting all the Bonneville Administrator’s other transmission costs  
21 and expenses; and

1 “(ii) produce the revenues necessary to assure timely payment of  
2 all transmission related costs and expenses, including revenues to establish  
3 reserves;

4 “(E) rules established by the Commission to--

5 “(i) assure transmission access is provided over the Bonneville  
6 Transmission System for hydroelectric power that must be generated and  
7 transmitted at a particular time in order to reduce spill and levels of  
8 dissolved nitrogen gas harmful to fish, and

9 “ (ii) govern compensation to adversely affected transmission users  
10 when capacity is made available for transmission of hydroelectric power in  
11 those circumstances; and

12 “(F) subsection 205(g) of this Act; and

13 “(2) these sections shall not apply to--

14 “(A) the Bonneville Administrator’s activities other than transmission of  
15 electric energy and provision of necessary associated services over the facilities of  
16 the Bonneville Transmission System; or

17 “(B) a contract in effect on the date of enactment of this Section, except  
18 for rates which are adjustable by the Administrator under the contract; a Treaty of  
19 the United States; or a contract concerning the physical delivery of energy and  
20 capacity entered into by entities designated pursuant to such a Treaty.”.

21 SEC. 813. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NON-

1 RECOVERABLE COSTS.

2 Section 205 of the Federal Power Act is amended by adding the following after  
3 subsection (f):

4 “(g)(1) Subject to the requirements of paragraph (2), the Bonneville Administrator shall  
5 propose and the Commission shall establish a mechanism pursuant to this section that enables the  
6 Administrator to place a surcharge on rates or charges for transmission services over the  
7 Bonneville Transmission System when necessary in order to recover power costs unable to be  
8 recovered through power revenues in time to meet the cost recovery requirements of section 7(a)  
9 of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(a)(1)).

10 “(2) The transmission surcharge mechanism set forth in paragraph (1) shall--

11 “(A) recover not more than \$600 million in total and no more than \$100 million in  
12 any fiscal year;

13 “(B) be available only between October 1, 2001, and October 1, 2016;

14 “(C) be implemented by the Bonneville Administrator only when the Bonneville  
15 Administrator projects that available financial reserves attributable to the power function  
16 will be less than \$150 million; and

17 “(D) to the fullest extent possible, be designed and established to recover the costs  
18 from transmission users in a manner that –

19 “(i) minimizes any effect on transmission users’ choices among competing  
20 suppliers or products,

21 “(ii) does not apply to use of the Bonneville Transmission System for

1 power sales outside the Pacific Northwest, and

2 “(iii) minimizes bypass of the Bonneville Transmission System by  
3 transmission users seeking to avoid the surcharge.

4 “(3) The Bonneville Administrator shall have sole discretion to determine whether to  
5 implement the cost recovery mechanism established by the Commission under paragraph (1).  
6 Before imposing the surcharge, the Bonneville Administrator shall conduct a public process in  
7 the Pacific Northwest to receive comment on implementation of the surcharge. As a part of that  
8 public process, the Bonneville Administrator shall make available information concerning the  
9 need for and amount of the surcharge. If the Bonneville Administrator decides to implement a  
10 surcharge, it shall take effect on the Bonneville Administrator’s proposed effective date, but no  
11 earlier than sixty days following the Administrator’s filing of the proposed surcharge to the  
12 Commission for approval.

13 “(4)(A) Within 120 days after the effective date of the surcharge, the Commission shall  
14 approve, reject, or modify the surcharge and communicate its decision to the Bonneville  
15 Administrator. In conducting its review, the Commission shall not consider the appropriateness  
16 of the cost recovery mechanism established by the Commission under paragraph (1).

17 “(B) If the Commission rejects or modifies the surcharge, the Commission may order the  
18 Bonneville Administrator to refund, with interest, the portion of the surcharge the Commission  
19 found not justified or the Commission may authorize the Bonneville Administrator to recover  
20 amounts from customers who underpaid or did not pay the surcharge. If the Commission orders  
21 modification of the Bonneville Administrator’s surcharge, such modified charge shall be



1 effective on the date and for the time period specified by the Commission.

2 “(5) Any payment of power costs through application of transmission revenues collected  
3 by surcharge or otherwise shall be treated as a loan to the Bonneville Administrator's power  
4 function. The Bonneville Administrator shall repay the loan as soon as possible from power  
5 function revenues once the Bonneville Administrator is able to meet other power cost recovery  
6 and Treasury repayment obligations on an annual basis using power revenues and, to the extent  
7 practicable, refund such revenues to all transmission customers charged the surcharge. The  
8 borrowed revenues shall bear interest at a rate determined appropriate by the Commission.

9 “(6) For the recovery of costs relating to any generation or conservation resources  
10 financed by debt issued by a non-Federal party before October 1, 1998, and secured by an  
11 obligation of the Bonneville Administrator to make payments or net bill power and transmission  
12 service that cannot be recovered through power rates and charges and paid in accordance with the  
13 application of revenues and the priority of payments specified by Section 13(b) of the Federal  
14 Columbia River Transmission System Act of 1974 (16 U.S.C. 838k(b)), the provisions of this  
15 section apply, except for the recovery limitations under paragraph (2)(A) and the time limits  
16 under paragraph (2)(B), but only to the extent such recovery would have been allow under laws  
17 applicable to the Bonneville Administrator as of October 1, 1998. In reviewing this surcharge  
18 request, the Commission shall apply the standard of review applicable as of October 1, 1998.”

19 SEC. 814. COMPLAINTS.

20 Section 306 of the Federal Power Act is amended by inserting “agency or instrumentality  
21 of the United States,” after “person,” in the first sentence.

1 SEC. 815. REVIEW OF COMMISSION ORDERS.

2 Section 313 of the Federal Power Act is amended by inserting “agency or instrumentality  
3 of the United States,” after “person,” in the first sentence in subsection (a).”.

4 SEC. 816. CONFORMING AMENDMENTS.

5 (a) Section 201(f) of the Federal Power Act is amended by striking “No” and inserting “(1)  
6 Except as provided in sections 201A and 202(h)-(i), no”.

7 (b) Section 212(i) of the Federal Power Act (16 U.S.C. 824(i)) is repealed.

8 (c) Section 6 of the Federal Columbia River Transmission System Act (16 U.S.C. 838d)  
9 is repealed.

10 (d) Section 9 of the Federal Columbia River Transmission System Act (16 U.S.C. 838g)  
11 is amended to read as follows:

12 “RATES AND CHARGES

13 “Sec. 9. Schedules of rates and charges for the sale, including dispositions to a Federal  
14 agency, of all electric power made available to the Administrator pursuant to section 8 of this Act  
15 or otherwise acquired shall be established—

16 “(1) with a view to encouraging the widest possible diversified use of electric  
17 power at the lowest possible rates to consumers consistent with sound business  
18 principles;

19 “(2) having regard to the recovery (upon the basis of the application of such rate  
20 schedules to the capacity of the electric facilities of the projects) of the cost of producing  
21 such electric power, including the amortization of the capital investment allocated to

1 power over a reasonable period of years and payments provided for in section 11(b)(9) of  
2 this Act; and

3 “(3) at levels to produce such additional power revenues as may be required, in  
4 the aggregate with all other power revenues of the Administrator, to pay when due the  
5 principal of, premiums, discounts, and expenses in connection with the issuance of and  
6 interest on all bonds issued and outstanding pursuant to this Act for other than the  
7 construction, acquisition, and replacement of the Federal transmission system, and  
8 amounts required to establish and maintain reserve and other funds and accounts  
9 established in connection therewith.

10 Electric power rates under this section shall be established by the Administrator in accordance  
11 with section 7 of the Pacific Northwest Electric Power Planning and Conservation Act.”.

12 (e) Section 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838h)  
13 is repealed.

14 (f) Section 6 of the Pacific Northwest Regional Preference Act (16 U.S.C. 837e) is  
15 amended by striking the "Federal energy or" in the first sentence and by striking the second  
16 sentence.

17 (g) Section 7(a)(1) of the Pacific Northwest Electric Power Planning and Conservation  
18 Act (16 U.S.C. 839e(a)(1)) is amended to read as follows:

19 “(a)(1) The Administrator shall establish, and periodically review and revise, rates for the  
20 sale and disposition of electric power and shall periodically review and, if necessary, propose  
21 revisions to rates for the transmission of electric power. Rates for the sale and disposition of

1 electric power shall be established and, as appropriate, revised to recover, in accordance with  
2 sound business principles, the costs associated with the acquisition and conservation of electric  
3 power, including the amortization of the Federal investment allocable to electric power rates in  
4 the Federal Columbia River Power System (including irrigation electric-power-related costs  
5 required to be repaid out of electric power revenues) over a reasonable period of years and the  
6 other costs and expenses incurred by the Administrator pursuant to this Act and other provisions  
7 of law. Rates for the sale and disposition of electric power shall be established in accordance  
8 with section 9 of the Federal Columbia River Transmission System Act (16 U.S.C. 838g),  
9 section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), and this Act.”.

10 (h) Section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation  
11 Act (16 U.S.C. 839e(a)(2)) is amended by—

- 12 (1) striking “Rates” and inserting “Power rates”;
- 13 (2) inserting “and” after the comma in subparagraph (A);
- 14 (3) striking “, and” and inserting a period at the end of subparagraph (B); and
- 15 (4) striking subparagraph (C).

16 (i) Section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act  
17 (16 U.S.C. 839(i)) is amended by inserting “power” immediately after “establishing” in the first  
18 sentence.

19 (j) Section 9(d) of the Pacific Northwest Electric Power Planning and Conservation Act  
20 (16 U.S.C. 839f(d)) is amended by striking “transmission access,” and inserting “power”  
21 immediately before “services” in the second sentence.

1 (k) Section 9(i)(3) of the Pacific Northwest Electric Power Planning and Conservation Act  
2 (16 U.S.C. 839f(i)(3)) is amended by inserting “power” immediately before “services” each  
3 time it appears, and by striking “transmission,” in the first sentence.

4 (l) Section 2(e) of the Bonneville Project Act (16 U.S.C. 832a(e)) is amended by striking  
5 the colon and all that follows and inserting a period.

6 Subtitle C—Western Area Power Administration and

7 Southwestern Area Power Administration

8 SEC. 821. DEFINITIONS.

9 Section 3 of the Federal Power Act is amended by adding the following new paragraphs  
10 after paragraph (29) as added by subsection 811:

11 “(30) ‘SWPA Administrator’ means the Administrator of the Southwestern Power  
12 Administration;

13 “(31) ‘SWPA Transmission System’ means transmission facilities owned or controlled by  
14 the United States and operated by the SWPA Administrator or an entity with authority over these  
15 facilities under section 202(h) or (i) of this Act;

16 “(32) ‘WAPA Administrator’ means the Administrator of the Western Area Power  
17 Administration; and

18 “(33) ‘WAPA Transmission System’ means transmission facilities owned or controlled  
19 by the United States and operated by the WAPA Administrator or an entity with authority over  
20 these facilities under section 202(h) or (i) of this Act.”.

21 SEC. 822. APPLICATION OF FEDERAL POWER ACT.

1           Section 201A of the Federal Power Act as added by section 802 of this Act is amended  
2 by adding the following new subsection after subsection (b) as added by section 812 of this Act:

3           “(c) Western Area Power Administration and Southwestern Power Administration.--

4           After September 30, 2001, sections 202(h) and (i), 203 (with respect to dispositions of  
5 transmission facilities), 205, 206, 208, and 210 through 213 of this Part and sections 301 through  
6 304, 306, 307 (except the last sentence of paragraph (c)), 308, 309, 313, and 317 of Part III apply  
7 to transmission facilities and transmission of electric energy over the SWPA and WAPA  
8 Transmission Systems and the provision of necessary associated services over the SWPA and  
9 WAPA Transmission Systems, provided that--

10           “(1) any determination made under those sections as to whether an action or  
11 matter is just, reasonable, not unduly discriminatory or preferential shall be subject to--

12           “(A) phasing in Commission-ordered changes in transmission rates or  
13 charges that would cause unreasonable cost shifts among users of the SWPA and  
14 WAPA Transmission Systems if implemented at once;

15           “(B) complying with requirements of other laws applicable to the SWPA  
16 and WAPA Administrators;

17           “(C) assuring the transmission rates and charges of the SWPA and WAPA  
18 Administrators are established sufficient to--

19           “(i) recover existing and future Federal investment in the  
20 transmission system over a reasonable number of years after first meeting  
21 all other transmission costs and expenses; and

1 “(ii) produce the revenues necessary to assure timely payment of  
2 all transmission related costs and expenses, including revenues to establish  
3 reserves;

4 “(D) subsection 205(h) of this Act; and

5 “(E) permitting the WAPA Administrator to establish more than one rate  
6 for the transmission facilities of its regions or projects; and

7 “(2) these sections shall not apply to--

8 “(A) activities of the SWPA and WAPA Administrators other than  
9 transmission of electric energy and provision of necessary associated services  
10 over the facilities of their respective systems; or

11 “(B) a contract in effect on the date of enactment of this Act, except for  
12 rates which are adjustable by the Administrator under the contract.”.

13 SEC. 823. SURCHARGE ON TRANSMISSION RATES TO RECOVER OTHERWISE NON-  
14 RECOVERABLE COSTS.

15 Section 205 of the Federal Power Act is amended by adding the following after  
16 subsection (g) as added by section 814 of this Act:

17 “(h)(1) The Commission shall establish rules for Commission approval of a surcharge on  
18 rates or charges for transmission services over the SWPA and WAPA transmission systems,  
19 including a reasonable limitation on amounts to be recovered under the surcharge and such other  
20 rules necessary to ensure that the surcharge minimizes any effect of transmission users’ choice  
21 among competing suppliers or products and reflects cost causation, in order to recover power

1 costs unable to be recovered through power revenues in time to meet statutory or regulatory cost  
2 recovery requirements.

3 “(2) The SWPA and WAPA Administrators shall have sole discretion to determine  
4 whether to implement the cost recovery mechanism established by the Commission under  
5 paragraph (1) for their respective transmission systems. Before imposing the surcharge, the  
6 Administrator shall conduct a public process to receive comment on implementation of the  
7 surcharge. As a part of that public process, the Administrator shall make available information  
8 concerning the need for and amount of the surcharge. If the Administrator decides to implement  
9 a surcharge, it shall take effect on the Administrator’s proposed effective date, but no earlier than  
10 sixty days following the Administrator’s filing of the proposed surcharge to the Commission for  
11 approval.

12 “(3)(A) Within 120 days after the effective date of the surcharge, the Commission shall  
13 approve, reject, or modify the surcharge and communicate its decision to the Administrator. In  
14 conducting its review, the Commission shall not consider the appropriateness of the cost  
15 recovery mechanism established by the Commission under paragraph (1).

16 “(B) If the Commission rejects or modifies the surcharge, the Commission may order the  
17 Administrator to refund, with interest, the portion of the surcharge the Commission found not  
18 justified or the Commission may authorize the Administrator to recover amounts from customers  
19 who underpaid or did not pay the surcharge. If the Commission orders modification of the  
20 Administrator’s surcharge, such modified charge shall be effective on the date and for the time  
21 period specified by the Commission.



1 “(4) Any payment of power costs through application of transmission revenues collected  
2 by surcharge or otherwise shall be treated as a loan to the Administrator's power function. The  
3 Administrator shall repay the loan as soon as possible from power function revenues once the  
4 Administrator is able to meet other power cost recovery and Treasury repayment obligations on  
5 an annual basis using power revenues, and, to the extent practicable, refund such revenues to all  
6 transmission customers charged the surcharge. The borrowed revenues shall bear interest at a  
7 rate determined appropriate by the Commission.”.

8 SEC. 824. CONFORMING AMENDMENTS.

9 (a) Section 302(a)(1) of the Department of Energy Organization Act (42 U.S.C. 7152) is  
10 amended by –

11 (1) striking “There” and inserting in its place “Except for the authority addressed  
12 in paragraph (G) below, there”, and

13 (2) adding the following new subparagraph after subparagraph (E):

14 “(F) Authority for the approval, rejection, and modification of  
15 transmission rates for the Southwestern and Western Area Power Administrations  
16 is transferred to the Federal Energy Regulatory Commission.”.

17 (b) Section 221 of the Reclamation Reform Act of 1982 (43 U.S.C. 390uu) is amended  
18 by–

19 (1) striking “executed pursuant to Federal reclamation law”, and

20 (2) inserting “as defined in section 202 of this Act” after “contract”.

21 TITLE IX -- OTHER PROVISIONS

1     Sec. 901. TREATMENT OF NUCLEAR DECOMMISSIONING COSTS IN BANKRUPTCY.

2             Section 523 of title 11, United States Code (section 523 of the Bankruptcy Code of 1978),  
3     is amended by adding the following new subsection after subsection (e):

4             "(f) Obligations to comply with, and claims resulting from compliance with, Nuclear  
5     Regulatory Commission regulations or orders governing the decontamination and  
6     decommissioning of nuclear power reactors licensed under section 103 or 104 b. of the Atomic  
7     Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)) shall be given priority and shall not be  
8     rejected, avoided, or discharged under title 11 of the United States Code or in any liquidation,  
9     reorganization, receivership, or other insolvency proceeding under State or Federal law."

10    SEC. 902. ENERGY INFORMATION ADMINISTRATION STUDY OF IMPACTS OF  
11    COMPETITION IN ELECTRICITY MARKETS.

12            Section 205 of the Department of Energy Organization Act (42 U.S.C. 7135) is amended  
13    by adding after subsection (l) the following new subsection:

14            “(m)(1) The Administrator shall collect and publish information regarding the impact of  
15    wholesale and retail competition on the electric power industry and consumers. The  
16    Administrator shall prescribe forms for collecting this information. Information to be collected  
17    may include, but is not limited to --

18            "(A) the ownership and control of electric generation, transmission, distribution,  
19    and related facilities;

20            "(B) electricity consumption and demand;

21            "(C) the transmission, distribution, and delivery of electric services;

1           "(D) the price of competitive electric services;

2           "(E) the costs, revenues, and rates of regulated electric services;

3           "(F) the reliability of the electric generation and transmission system, including  
4           the availability of adequate generation and transmission capacity to meet load  
5           requirements, generation and transmission capacity additions and retirements, and fuel  
6           suppliers and stocks for electric generation;

7           "(G) electric energy efficiency programs and services and their impacts on energy  
8           consumption;

9           "(H) the development and use of renewable electric energy resources; and

10          "(I) research, development and demonstration activities to improve the nation's  
11          electric system.

12          "(2) In carrying out the purposes of this subsection, the Administrator shall take into  
13          account reporting burdens and the protection of proprietary information as required by law."

14          SEC. 903. ANTITRUST SAVINGS CLAUSE.

15          This Act and the amendments made by this Act shall not be construed to modify, impair,  
16          or supersede the operation of the antitrust laws. For purposes of this section, "antitrust laws" has  
17          the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)),  
18          except that it includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the  
19          extent that section 5 applies to unfair methods of competition.

20          SEC. 904. ELIMINATION OF ANTITRUST REVIEW BY THE NUCLEAR REGULATORY  
21          COMMISSION.

1           Section 105 of the Atomic Energy Act of 1954 (42 U.S.C. 2135) is amended by adding  
2           the following after subsection c.:

3           “d. Following the effective date of this subsection, subsection 105 c. shall not apply to  
4           any pending or future application filed for a license to construct or operate a utilization facility  
5           under sections 103 or 104 b. This Act shall not affect the Commission’s authority to enforce  
6           antitrust conditions included in licenses issued under sections 103 or 104 b. before the date of  
7           enactment of this subsection.”.

8           SEC. 905. ENVIRONMENTAL LAWS SAVINGS CLAUSE.

9           Nothing in this Act alters or affects environmental requirements imposed by Federal or  
10          State law, including, but not limited to, the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal  
11          Water Pollution Control Act (33 U.S.C. 1251 et seq.); the Comprehensive Environmental  
12          Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); the Federal Power  
13          Act (16 U.S.C. 791a et seq.); and the Endangered Species Act (16 U.S.C. 1531 et seq.).

14          SEC. 906. GENERATING PLANT EFFICIENCY STUDY.

15          Part C of title VI of the Department of Energy Organization Act is amended by adding  
16          after section 662, the following new section:

17                               “GENERATING PLANT EFFICIENCY STUDY

18               “SEC. 663. Within three years following the date of enactment of this section, the  
19               Secretary shall issue a report comparing the impact of wholesale and retail competition on the  
20               efficiency of new and existing electric generating facilities.”.

21          SEC. 907. CONFORMING AMENDMENTS.

(a) The Table of Contents of PURPA is amended by–

(1) inserting after the listing for section 117 under subtitle B of title I:

“Sec. 118. Authority to impose reciprocity requirements.  
“Sec. 119. Aggregation for purchase of retail electric energy.  
“Sec. 119A. Consumer information disclosure.  
“Sec. 119B. Access to electric service for low-income consumers.  
“Sec. 119C. Residential electricity consumer database.  
“Sec. 119D. Model code for retail suppliers.  
“Sec. 119E. Model code for electric utility workers.”, and

(2) inserting after the listing for section 608:

“Sec. 609. Retail competition.  
“Sec. 610. Public Benefits Fund.  
“Sec. 611. Federal renewable portfolio standard.  
“Sec. 612. Net metering for renewable energy.  
“Sec. 613. Interconnections for certain facilities.”.

(b) The Table of Contents of the Energy Policy Act of 1992 is amended by inserting after the listing for section 2606:

“Sec. 2607. Tribal electricity assistance.”.

(c) The Table of Contents of the Department of Energy Organization Act is amended by–

(1) inserting after the listing for section 212:

“Sec. 213. Office of Indian Energy Policy and Programs.  
“Sec. 214. Electricity Outage Investigation Board.”, and

(2) inserting after the listing for section 662:

“Sec. 663. Generating plant efficiency study.”.

## TITLE X – AMENDMENTS TO INTERNAL REVENUE CODE

SEC. 1001. TREATMENT OF BONDS ISSUED TO FINANCE ELECTRIC OUTPUT

1 FACILITIES.

2 (a) IN GENERAL.—Section 141 of the Internal Revenue Code of 1986 (relating to private  
3 activity bond; qualified bond) is amended by redesignating subsection (e) as subsection (f) and  
4 inserting after subsection (d) the following new subsection:

5 “(e) BONDS FOR ELECTRIC OUTPUT FACILITIES.—

6 “(1) BONDS ISSUED BEFORE ENACTMENT OF COMPREHENSIVE  
7 ELECTRICITY COMPETITION ACT.—

8 “(A) IN GENERAL.—The determination of whether any pre-effective date  
9 electric output facility bond is a private activity bond (or an industrial  
10 development bond under the Internal Revenue Code of 1954) shall be made  
11 without regard to any permissible competitive actions taken by the issuer.

12 “(B) PRE-EFFECTIVE DATE ELECTRIC OUTPUT FACILITY  
13 BOND.—For purposes of subparagraph (A), the term ‘pre-effective date electric  
14 output facility bond’ means any bond issued as part of an issue if—

15 “(i) such bond was issued before the date of the enactment of the  
16 Comprehensive Electricity Competition Act,

17 “(ii) any portion of the proceeds of such issue was used with  
18 respect to an electric output facility, and

19 “(iii) the bond was not, as of such date of enactment, a private  
20 activity bond (or an industrial development bond under the Internal  
21 Revenue Code of 1954).

1 “(C) PERMISSIBLE COMPETITIVE ACTIONS.--For purposes of  
2 subparagraph (A), the term ‘permissible competitive actions’ means any action  
3 taken by the issuer on or after the date of the enactment of the Comprehensive  
4 Electricity Competition Act regarding—

5 “(i) transmission property owned by the issuer if the issuer is  
6 subject to an order of the Federal Energy Regulatory Commission  
7 requiring nondiscriminatory, open access to transmission facilities in a  
8 manner consistent with rules promulgated by the Commission under  
9 sections 205 and 206 of the Federal Power Act (as in effect on the date of  
10 the enactment of the Comprehensive Electricity Competition Act), or

11 “(ii) generation property or distribution property owned by the  
12 issuer if the issuer—

13 “(I) implements retail competition under section 609 of the  
14 Public Utility Regulatory Policies Act of 1978, or

15 “(II) enters into a contract for the sale of electricity or use  
16 of its distribution property which will not become effective prior to  
17 the date that the issuer implements retail competition under section  
18 609 of the Public Utility Regulatory Policies Act of 1978.

19 “(2) BONDS ISSUED ON OR AFTER ENACTMENT OF COMPREHENSIVE  
20 ELECTRICITY COMPETITION ACT.--

21 “(A) IN GENERAL.--For purposes of this title, the term ‘private activity

1           bond’ includes any bond issued as part of an issue any of the proceeds of which  
2           are to be used (directly or indirectly) for electric output facilities other than  
3           distribution property.

4                   “(B) DISTRIBUTION PROPERTY.—For purposes of subparagraph (A),  
5           the term ‘distribution property’ means any output facility, including functionally  
6           related and subordinate property, that operates at 69 kilovolts or less.”.

7           (b) EFFECTIVE DATE.—

8                   (1) IN GENERAL.—Except as otherwise provided in this subsection, the  
9           amendment made by this section shall apply to obligations issued on or after the date of  
10          the enactment of this Act.

11                  (2) TREATMENT OF PRE-EFFECTIVE DATE BONDS.—Section 141(e)(1) of  
12          the Internal Revenue Code of 1986, as added by this section, shall take effect on the date  
13          of enactment of this Act.

14                  (3) REFUNDING BONDS.—

15                   (A) IN GENERAL.—For purposes of this subsection and the amendment  
16           made by this section, section 141(e)(2) of the Internal Revenue Code of 1986, as  
17           added by this section, shall not apply to any qualified refunding bond.

18                   (B) QUALIFIED REFUNDING BOND.—For purposes of subparagraph  
19           (A), the term “qualified refunding bond” means any bond (or a bond that is part of  
20           a series of refundings) issued to refund a pre-effective date electric output facility  
21           bond if—



1 (i) the weighted average maturity of the issue of which the  
2 refunding bond is a part does not exceed 120 percent of the average  
3 reasonably expected economic life of the facilities being financed with the  
4 net proceeds of such issue (determined under section 147(b) of such  
5 Code),

6 (ii) the amount of the refunding bond does not exceed the  
7 outstanding amount of the refunded bond, and

8 (iii) the net proceeds of the refunding bond are used to redeem the  
9 refunded bond not later than 90 days after the date of issuance of the  
10 refunding bond.

11 SEC. 1002. NUCLEAR DECOMMISSIONING COSTS.

12 (a) IN GENERAL.—Subsection (b) of section 468A of the Internal Revenue Code of 1986  
13 is amended to read as follows:

14 “(b) LIMITATION ON AMOUNT PAID INTO FUND.—The amount which a taxpayer  
15 may pay into the Fund for any taxable year shall not exceed the ruling amount applicable to such  
16 taxable year.”.

17 (b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable  
18 years beginning after December 31, 1999.

19 SEC. 1003. DEPRECIATION TREATMENT OF DISTRIBUTED POWER PROPERTY.

20 (a) IN GENERAL. – Section 168(e)(3)(E) of the Internal Revenue Code (classifying  
21 certain property as 15-year property) is amended by striking “and” at the end of clause (ii),

1 striking the period at the end of clause (iii) and inserting “,and”, and by adding the following new  
2 clause:

3 “(iv) any distributed power property.”.

4 (b) CONFORMING AMENDMENTS. – (1) Section 168(i) is amended by adding at the  
5 end the following new paragraph:

6 “(15) Distributed power property. The term “distributed power property” means property

7 –

8 “(A) which is used in the generation of electricity for primary use

9 “(i) in nonresidential real or residential rental property used in the  
10 taxpayer’s trade or business, or

11 “(ii) in the taxpayer’s industrial manufacturing process or plant activity,  
12 with a rated total capacity in excess of 500 kilowatts,

13 “(B) which also may produce usable thermal energy or mechanical power for use  
14 in a heating or cooling application, as long as at least 40 percent of the total useful energy  
15 produced consists of

16 “(i) with respect to assets described in subparagraph (A)(i), electrical  
17 power (whether sold or used by the taxpayer), or

18 “(ii) with respect to assets described in subparagraph (A)(ii), electrical  
19 power (whether sold or used by the taxpayer) and thermal or mechanical energy  
20 used in the taxpayer’s industrial manufacturing process or plant activity.

21 “(C) which is not used to transport primary fuel to the generating facility or to

1 distribute energy within or outside of the facility, and

2 “(D) where it is reasonably expected that not more than 50 percent of the  
3 produced electricity will be sold to, or used by, unrelated persons.

4 For purposes of subparagraph (B), energy output is determined on the basis of expected  
5 annual output levels, measured in British thermal units (Btu), using standard conversion  
6 factors established by the Secretary.”

7 (2) Subparagraph (B) of section 168(g)(3) is amended by inserting after the item relating  
8 to subparagraph (E)(iii) in the table contained therein the following new line:

9 “(E)(iv) 22”.

10 (c) EFFECTIVE DATE. – The amendments made by this section are effective for  
11 property placed in service on or after the date of enactment.

12 SEC. 1004. TAX CREDIT FOR COMBINED HEAT AND POWER SYSTEM PROPERTY.

13 (a) IN GENERAL.--Subpart E of part IV of subchapter A of chapter 1 of the Internal  
14 Revenue Code of 1986 is amended by inserting after section 48 the following new section:

15 “SEC. 48A. ENERGY CREDIT.

16 “(a) IN GENERAL.--For purposes of section 46, the energy credit for any taxable year is  
17 the amount equal to the energy percentage of the basis of each energy property placed in service  
18 during such taxable year.

19 “(b) ENERGY PERCENTAGE. –

20 “(1) IN GENERAL. – Except as otherwise provided in this subsection, the energy  
21 percentage is 10 percent.

1           “(2) COMBINED HEAT AND POWER PROPERTY. – The energy percentage is  
2           8 percent in the case of combined heat and power property.

3           “(3) PERIOD FOR WHICH CREDIT IS ALLOWED FOR COMBINED HEAT  
4           AND POWER PROPERTY. – In the case of combined heat and power property, the  
5           credit under subsection (a) shall be allowed only for the period beginning on January 1,  
6           2000 and ending on December 31, 2002.

7           “(4) COORDINATION WITH REHABILITATION.–The energy percentage does  
8           not apply to that portion of the basis of any property which is attributable to qualified  
9           rehabilitation expenditures.

10           “(5) TRANSITION RULES. – Rules similar to the rules of section 48(m) (as in  
11           effect on the day before the date of the enactment of the Revenue Reconciliation Act of  
12           1990) shall apply for purposes of this subsection.

13           “(c) ENERGY PROPERTY DEFINED.--

14           “(1) IN GENERAL.-- For purposes of this subpart, the term ‘energy property’  
15           means any property --

16                   (A) which is --

17                           (i) solar energy property,

18                           (ii) geothermal energy property, or

19                           (iii) combined heat and power system property.

20                   (B)(i) the construction, reconstruction, or erection of which is completed

21                   by the taxpayer, or

(ii) which is acquired by the taxpayer if the original use of such property commences with the taxpayer,

“(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and

“(D) which meets--

“(i) the performance and quality standards (if any), and the certification requirements (if any), which have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy or the EPA Administrator, as appropriate), and

“(ii) are in effect at the time the property is placed in service.

“(2) EXCEPTION- Such term shall not include any property which is public utility property (as defined in section 46(f)(5) as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990). The preceding sentence shall not apply to combined heat and power system property.

“(d) DEFINITIONS RELATING TO TYPES OF ENERGY PROPERTY- For purposes of this section--

“(1) SOLAR ENERGY PROPERTY- The term ‘solar energy property’ means equipment which uses solar energy--

“(A) to generate electricity,

“(B) to heat or cool (or provide hot water for use in) a structure, or

“(C) to provide solar process heat.

1           “(2) GEOTHERMAL ENERGY PROPERTY- The term ‘geothermal energy  
2 property’ means equipment used to produce, distribute, or use energy derived from a  
3 geothermal deposit (within the meaning of section 613(e)(2)), but only, in the case of  
4 electricity generated by geothermal power, up to (but not including) the electrical  
5 transmission stage.

6           “(3) COMBINED HEAT AND POWER SYSTEM PROPERTY-

7               “(A) IN GENERAL- The term ‘combined heat and power system  
8 property’ means property comprising a system--

9                       “(i) which uses the same energy source for the simultaneous or  
10 sequential generation of electrical power, mechanical shaft power, or both,  
11 in combination with the generation of steam or other forms of useful  
12 thermal energy (including heating and cooling applications),

13                      “(ii) which has an electrical capacity of more than 50 kilowatts or a  
14 mechanical energy capacity of more than 67 horsepower or an equivalent  
15 combination of electrical and mechanical energy capacities,

16                      “(iii) which produces--

17                               “(I) at least 20 percent of its total useful energy in the form  
18 of thermal energy, and

19                               “(II) at least 20 percent of its total useful energy in the form  
20 of electrical or mechanical power (or a combination thereof), and

21                               “(iv) the energy efficiency percentage of which exceeds 60 percent

1 (70 percent in the case of a system with an electrical capacity in excess of  
2 50 megawatts or a mechanical energy capacity in excess of 67,000  
3 horsepower (or a combination thereof)).

4 “(B) SPECIAL RULES-

5 “(i) ENERGY EFFICIENCY PERCENTAGE- For purposes of  
6 subparagraph (A)(iv), the energy efficiency percentage of a system is the  
7 fraction--

8 “(I) the numerator of which is the total useful electrical,  
9 thermal, and mechanical power produced by the system at normal  
10 operating rates, and

11 “(II) the denominator of which is the lower heating value of  
12 the primary fuel source for the system.

13 “(ii) DETERMINATIONS MADE ON BTU BASIS- The energy  
14 efficiency percentage and the percentages under subparagraph (A)(iii)  
15 shall be determined on a Btu basis.

16 “(iii) INPUT AND OUTPUT PROPERTY NOT INCLUDED- The  
17 term ‘combined heat and power system property’ does not include  
18 property used to transport the energy source to the facility or to distribute  
19 energy produced by the facility.

20 “(iv) ACCOUNTING RULE FOR PUBLIC UTILITY  
21 PROPERTY- In the case that combined heat and power system property is

1 public utility property (as defined in section 46(f)(5) as in effect on the day  
2 before the date of the enactment of the Revenue Reconciliation Act of  
3 1990), the taxpayer may claim the credit under subsection (a)(1) only if,  
4 with respect to such property, the taxpayer uses a normalization method of  
5 accounting.

6 “(v) DEPRECIATION- No credit shall be allowed for any  
7 combined heat and power system property unless the taxpayer elects to  
8 treat such property for purposes of section 168 as having a class life of not  
9 less than 22 years.

10 “(e) SPECIAL RULES- For purposes of this section--

11 “(1) SPECIAL RULE FOR PROPERTY FINANCED BY SUBSIDIZED  
12 ENERGY FINANCING OR INDUSTRIAL DEVELOPMENT BONDS-

13 “(A) REDUCTION OF BASIS- For purposes of applying the energy  
14 percentage to any property, if such property is financed in whole or in part by--

15 “(i) subsidized energy financing, or

16 “(ii) the proceeds of a private activity bond (within the meaning of  
17 section 141) the interest on which is exempt from tax under section 103,  
18 the amount taken into account as the basis of such property shall not exceed the  
19 amount which (but for this subparagraph) would be so taken into account  
20 multiplied by the fraction determined under subparagraph (B).

21 “(B) DETERMINATION OF FRACTION- For purposes of subparagraph



1 (A), the fraction determined under this subparagraph is 1 reduced by a fraction--

2 “(i) the numerator of which is that portion of the basis of the

3 property which is allocable to such financing or proceeds, and

4 “(ii) the denominator of which is the basis of the property.

5 “(C) SUBSIDIZED ENERGY FINANCING- For purposes of

6 subparagraph (A), the term ‘subsidized energy financing’ means financing

7 provided under a Federal, State, or local program a principal purpose of which is

8 to provide subsidized financing for projects designed to conserve or produce

9 energy.

10 “(2) CERTAIN PROGRESS EXPENDITURE RULES MADE APPLICABLE-

11 Rules similar to the rules of subsections (c)(4) and (d) of section 46 (as in effect on the

12 day before the date of the enactment of the Revenue Reconciliation Act of 1990) shall

13 apply for purposes of this section.”.

14 (b) CONFORMING AMENDMENTS-

15 (1) Section 48 of such Code is amended to read as follows:

16 SEC. 48. REFORESTATION CREDIT.

17 “(a) IN GENERAL- For purposes of section 46, the reforestation

18 credit for any taxable year is 10 percent of the portion of the amortizable

19 basis of any qualified timber property which was acquired during such

20 taxable year and which is taken into account under section 194 (after the

21 application of section 194(b)(1)).

1 “(b) DEFINITIONS- For purposes of this subpart, the terms  
2 ‘amortizable basis’ and ‘qualified timber property’ have the respective  
3 meanings given to such terms by section 194.”.

4 (2) Subsection (d) of section 39 of such Code is amended by adding at the end the  
5 following new paragraph:

6 “(9) NO CARRYBACK OF ENERGY CREDIT BEFORE EFFECTIVE  
7 DATE- No portion of the unused business credit for any taxable year which is  
8 attributable to the energy credit determined under section 48A, except for the  
9 credit determined with respect to solar energy property and geothermal energy  
10 property, may be carried back to a taxable year ending before the date of the  
11 enactment of section 48A.”.

12 (3) Paragraph (3) of section 50(c) of such Code is amended by adding at the end  
13 the following flush sentence:

14 “In the case of the energy credit, the preceding sentence shall apply only to  
15 so much of such credit as relates to solar energy property and geothermal  
16 property (as such terms are defined in section 48A(e)).”.

17 (4) Subclause (III) of section 29(b)(3)(A)(i) of such Code is amended by striking  
18 “section 48(a)(4)(C)” and inserting “section 48A(g)(1)(C)”.

19 (5) Subparagraph (E) of section 50(a)(2) of such Code is amended by striking  
20 “section 48(a)(5)” and inserting “section 48A(g)(2)”.

21 (6) Subparagraph (B) of section 168(e)(3) of such Code is amended—

1 (A) in clause (vi)(I) by striking “section 48(a)(3)” and inserting  
2 “paragraphs (1) and (2) of section 48A(d)”, and

3 (B) in the last sentence by striking “section 48(a)(3)” and inserting  
4 “section 48A(c)(2)”.

5 (7) Subparagraph (E) of section 168(e)(3) of such Code, as amended by section  
6 803(a), is further amended by striking “and” at the end of clause (iii), by striking the  
7 period at the end of clause (iv) and inserting “, and”, and by inserting after clause (iv) the  
8 following new clause:

9 “(v) any combined heat and power system property (as defined in section  
10 48A(d)(4)) for which a credit is allowed under section 48A and which, but for this  
11 clause, would have a recovery period of less than 15 years.”.

12 (8) The table contained in subparagraph (B) of section 168(g)(3) of such Code, as  
13 amended by section 803(b)(2), is further amended by adding at the end the following:

14 “(E)(v) 22”.

15 (c) CLERICAL AMENDMENT- The table of sections for subpart E of part IV of  
16 subchapter A of chapter 1 of such Code is amended by striking the item relating to section 48 and  
17 inserting the following new items:

18 “Sec. 48. Reforestation credit.

19 “Sec. 48A. Energy credit.”.

20 (d) EFFECTIVE DATE- The amendments made by this section shall apply to periods  
21 after December 31, 1999, under rules similar to the rules of section 48(m) of the Internal

- 1 Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue
- 2 Reconciliation Act of 1990).